TROUTMAN PEPPER LOCKE LLP
Dabney J. Carr (VSB No. 28679)
1001 Haxall Pt.
Richmond, VA 23219
Telephone: (804) 697-1200

Leslie A. Davis (admitted *pro hac vice*)
401 9th Street, NW
Washington, DC 20004
Telephone: (202) 274-2950

Counsel for Century Indemnity Company and Westchester Fire Insurance Company

WHITE AND WILLIAMS LLP

Patricia B. Santelle (admitted *pro hac vice*)
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103
Telephone: (215) 864-7000

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	**Chapter 11**
HOPEMAN BROTHERS, INC.,	:	**Case No. 24-32428 (KLP)**
Debtor.	:	

CHUBB INSURERS' OBJECTION TO (1) FINAL APPROVAL OF DISCLOSURE STATEMENT AND (2) CONFIRMATION OF PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

2432428250707000000000019

Table of Contents

PRELIMINARY STATEMENT 1

FACTUAL BACKGROUND.....4

I. Hopeman is a Defunct Company with No Ongoing Business to Rehabilitate or Reorganize. 4

II. Asbestos Claims Against Hopeman and Hopeman's Insurance Coverage.....7

III. Hopeman's Bankruptcy-Related Settlement with the Chubb Insurers. 13

IV. Hopeman Settles with the Chubb Insurers as Part of Hopeman's Chapter 11 Petition Because it Would Avoid a "Race to the Courthouse" by Asbestos Claimants, which is Exactly the Concern Acknowledged by the Court when it Approved the Certain Insurers' Settleent Agreement.....14

V. Hopeman Pivots from a Plan of Liquidation to a § 524(g) Reorganization Plan. 19

VI. The Proposed Plan and Plan-Related Activity.....22

ARGUMENT…….26

I. Section 524(g) Relief is Not Permitted because Hopeman has No Existing Business to Reorganize, it is Liquidating Through the Plan, and it will Not be Engaged in an Ongoing Business if the Plan is Confirmed.....26

A. Debtor is Not Entitled to a Discharge. 26

1. Hopeman has No Business to "Reorganize" in this Chapter 11 Case. 27

2. The Plan Provides for the Liquidation of All of the Property of the Estate.....29

B. Reorganized Hopeman's Proposed Passive Real Estate Investment Is Not an "Ongoing Business" as Required by § 524(g). 31

C. The Plan Turns the Purpose and Intent of § 524(g) Upside Down. 38

1. Instead of Channeling Asbestos Claims Away from Reorganized Hopeman, the Plan Requires Claimants to Continue Suing Reorganized Hopeman. 38

2. Instead of Requiring Reorganized Hopeman to Provide "Evergreen" Funding to the Trust, the Trust will Provide Ongoing Funding to Reorganized Hopeman. 39

3. Current Claims and Future Demands Will Not be Paid in Substantially the Same Manner because the Plan Creates the Quintessential Race to the Courthouse. 40

II. The Plan Does Not Satisfy § 1123 because it Does Not Provide the Same Treatment for Each Claim in Class 4. 43

III. The Plan Does Not Comply with § 1129(a)(7) and Violates § 1129(a)(2) because the Liquidation Analysis is Premised on False Assumptions and Fails to Include Information Known to the Plan Proponents.....48

A. The Liquidation Analysis Relies on Incorrect Assumptions. 48

B. The Plan Cannot be Confirmed Pursuant to § 1129(a)(2) because the Plan Proponents Failed to Include Adequate Information in the Liquidation Analysis

and Disclosure Statement Regarding Asbestos Claimants' Anticipated Recoveries Under the Plan as Compared to a Chapter 7 Liquidation, in Violation of § 1125. 51

1. The Liquidation Analysis Contains No Analysis Regarding Uninsured Asbestos Claims. 51

2. The Disclosure Statement and Liquidation Analysis Contain No Discussion of the Litigation Trustee's Contingency Fee and the Impact on Insured Asbestos Claimants' Recoveries. 53

3. The Disclosure Statement and Liquidation Analysis Fail to Disclose Projections Prepared by Debtor's and the Committee's Experts in this Case Reflecting that Current Creditors are Likely to Recover in Full in a Chapter 7 Scenario.....55

C. The Plan is Not in the "Best Interests" of Asbestos Creditors. 58

IV. The Plan Improperly Seeks to Alter the Chubb Insurers' Rights. 58

A. The Plan's "Insurance Neutrality" Language Does Not Adequately Protect the Insurers' Rights. 59

B. The Plan Imposes Obligations on the Chubb Insurers Beyond What They Contractually Agreed and Improperly Purports to Alter the Chubb Insurers' Policies and CIP Asbestos Agreements. 61

C. The Plan and Plan Documents Impair the Chubb Insurers' Rights to Information Regarding Claims They will be Asked to Defend and Threaten to Effectuate an Irreversible Waiver of Hopeman's Attorney-Client Privilege and Work Product Protections.....66

D. The Plan Treats the Chubb Insurers as Non-Settling Insurers and Does Not Adequately Provide for the Chubb Insurers' Rejection Damages. 68

E. The Insurance Finding in § 11.1(g)(xxvii) of the Plan is Unlawful.....68

V. The Plan is Not Proposed in Good Faith under § 1129(a)(3) and it Cannot be Confirmed. 70

CONCLUSION……..79

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America ("Century") and Westchester Fire Insurance Company (on its own behalf and for policies issued by or novated to Westchester Fire Insurance Company) ("Westchester Fire") (Century and Westchester Fire together, the "Chubb Insurers"), parties in interest, hereby object to (1) final approval of the Disclosure Statement with Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. under Chapter 11 of the Bankruptcy Code, Dkt. No. 767 (the "Disclosure Statement") and (2) confirmation of the Amended Plan of Reorganization of Hopeman Brothers, Inc. under Chapter 11 of the Bankruptcy Code, Dkt. No. 766 (the "Plan").

PRELIMINARY STATEMENT

1. The Plan Proponents bear the burden of proving that all the requirements of § 524(g) and § 1129 have been met. They cannot do so. The proposed Plan cannot satisfy § 524(g) and many of the confirmation requirements set forth in § 1129(a), including good faith.

2. The two recognized policies underlying Chapter 11 are preserving going concerns and maximizing property available to satisfy creditors. The proposed Plan serves neither purpose. Debtor admittedly has had no business operations or employees since 2003, so there is no going concern to preserve. "Aside from its remaining cash and business records, Hopeman's only other assets are its interests in the remaining limits of its insurance policies,"[1] none of which can be maximized through a Chapter 11 case and the Plan. Accordingly, to the extent insurance is the only material asset available to satisfy Asbestos Claims, the Plan provides no benefit to the holders of those claims.

[1] Disclosure Statement, p. 6.

3. Section 524(g) was created specifically to further the well-recognized purposes of Chapter 11. Through the supplemental discharge injunction that channels asbestos claims away from the reorganized company, "the [bankrupt] company remains viable. . . [and] continues to generate assets to pay claims today and into the future. In essence, the reorganized company becomes the goose that lays the golden egg by remaining a viable operation and maximizing the trust's assets to pay claims."[2] The proposed Plan accomplishes exactly the opposite. It proposes to resurrect a long-defunct entity through a post-Effective Date[3] passive investment so that holders of Asbestos Claims and their counsel can continue to sue Reorganized Hopeman. Instead of Reorganized Hopeman engaging in business operations and generating ongoing funding for the Trust to pay Asbestos Claims, ***the Trust*** will have an ongoing obligation to transfer its limited assets ***to Reorganized Hopeman*** to fund Reorganized Hopeman's "working capital."[4]

4. Debtor made clear at the outset of this bankruptcy case that its purpose was to avoid "the classic 'race to the courthouse' for claimants to recover remaining insurance proceeds."[5] Yet, the resolution of Insured Asbestos Claims under the proposed Plan creates the very "race to the courthouse" that Debtor (and the Court) sought to avoid, not only as between current holders of Asbestos Claims, but also between current claimants and future Demand holders. While the Plan purports to "channel" Asbestos Claims to the Trust for "processing, liquidation, and payment," the mechanism for resolving and paying Insured Asbestos Claims under the Plan is no different than

---

[2] *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 n. 69 (3d Cir. 2004) (quoting 140 Cong. Rec. S4521–01, S4523 (Apr. 20, 1994)).

[3] Capitalized terms not defined herein have the meaning ascribed to them in the Plan.

[4] Trust Agreement, § 3.2(k)).

[5] Dkt. No. 8, Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc. ("Lascell Decl."), ¶ 37. *See also* Dkt. No. 57, Disclosure Statement with Respect to the Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, p. 12 ("Reasons for the Chapter 11 Filing").

it would be if this bankruptcy case did not exist. Yet, the Plan imposes a 33.3% contingency fee on Insured Asbestos Claimants' recoveries, which would not occur in a chapter 7 liquidation. The Plan thus cannot satisfy the "best interests" requirement. The Disclosure Statement and Liquidation Analysis do not disclose this material impact on claimants' recoveries under the Plan.

5. Debtor contends that the Plan will not alter or impair Non-Settling Asbestos Insurers' rights or defenses under their policies and pre-petition coverage-in-place ("CIP") agreements, but the structure and intended operation of the Plan will do exactly that. The Plan impermissibly seeks to transfer Debtor's rights under the Chubb Insurers' Policies and CIP agreements to the Trust without also transferring the corresponding obligations under those contracts. Moreover, the Plan eliminates Non-Settling Asbestos Insurers' rights of recovery against other insurers that also cover any Insured Asbestos Claim, yet it provides no means of recovery for such claims other than in the limited circumstance of Judgment Reduction for Settled Asbestos Insurers' shares. Further, the Plan is impermissibly conditioned on a declaratory judgment from this Court, with *res judicata* effect, regarding the applicability of the insurers' coverage defenses under state law, without affording the Chubb Insurers due process with respect to the proposed adjudication and without complying with Bankruptcy Rule 7001(9). These structural flaws preclude confirmation of the Plan as a matter of law. They also show that this Plan was not proposed in good faith as required by § 1129(a)(3) because it is intended to strong-arm Non-Settling Asbestos Insurers into paying greater amounts than they would ever owe under their policies to obtain injunctive protection from the increased liabilities and perverse incentives created by this Plan.

6. Finally, under the Plan, the individual selected to serve as the sole director of Reorganized Hopeman – wholly owned by the Trust – is the ***same*** individual who will serve as the Trust's Litigation Trustee. The Litigation Trustee's sole compensation is a 33.3% contingency fee

on amounts recovered in litigation on behalf of the Trust, including litigation against Non-Settling Asbestos Insurers on behalf of holders of Channeled Asbestos Claims. This creates an inherent conflict of interest in two ways. First, the Litigation Trustee owes a fiduciary duty to the Trust, including to maximize recoveries for holders of Channeled Asbestos Claims against Reorganized Hopeman. That directly conflicts with duties he owes to Reorganized Hopeman and its insurers, whose interests are in minimizing Hopeman's liabilities. Second, the Litigation Trustee maximizes his contingency fee compensation from insurance recoveries by maximizing the amount of Reorganized Hopeman's liabilities for Insured Asbestos Claims, creating the incentive to inflate Reorganized Hopeman's liabilities for which insurance recoveries will be sought. This is precisely the type of conflict that renders a plan patently unconfirmable pursuant to § 1129(a)(3).[6]

7. There are many flaws with the proposed Plan. The Chubb Insurers raise these issues as creditors and parties in interest whose ox will be gored in ways impermissible under the Bankruptcy Code and applicable non-bankruptcy law if the proposed Plan is confirmed. For the reasons set forth below, final approval of the Disclosure Statement and confirmation of the Plan must be denied.

FACTUAL BACKGROUND

I. Hopeman is a Defunct Company with No Ongoing Business to Rehabilitate or Reorganize.

8. Hopeman filed its Chapter 11 petition on June 30, 2024. According to its president, Christopher Lascell, since 2003, "Hopeman has had no business operations and exists solely to

[6] *See In re American Capital Equipment, LLC and Skinner Engine Companies*, 688 F.3d 145 (3d Cir. 2012) ("*Skinner*").

defend and, when appropriate, settle [ ] Asbestos-Related Claims."[7] The Committee likewise admits that Hopeman is not a "solvent entity capable of being out of bankruptcy."[8] The Plan Proponents also admit that "Hopeman has no employees" and that, "[a]side from its remaining cash and business records, Hopeman's only other assets are its interests in the remaining limits of its insurance policies."[9]

9. Given its lack of income-producing operations, Hopeman could not pay for its share of defense costs and claim payments with respect to Asbestos-Related Claims once its remaining cash was depleted. Thus, Hopeman commenced this Chapter 11 proceeding "to seek approval and implementation of an efficient, value maximizing process to monetize the remaining available insurance and distribute those proceeds equitably to valid holders of Asbestos-Related Claims."[10] Hopeman planned to accomplish this through largely identical settlements with the Chubb Insurers and Certain Insurers and a liquidating plan to distribute those settlement proceeds to current holders of Asbestos Claims.[11] Mr. Van Epps, Hopeman's insurance consultant and financial advisor since 2004[12], explained that Hopeman pursued the Chubb Insurers' and Certain Insurers' settlements and filed its liquidating plan because, "[w]e don't see an avenue that allows this to go on forever. ***The debtor doesn't have money***. ***They don't have a source of future income***."[13] The same holds true today.

---

[7] Dkt. No. 8, ¶ 18. *See also* Disclosure Statement, p. 6 ("Since the [ ] Asset Sale in 2003, Hopeman has existed solely to defend and, when appropriate, settle the Asbestos Claims.").

[8] 7/3/25 Branham Tr., p. 21:21-22:2.

[9] Disclosure Statement, p. 6.

[10] Dkt. No. 8, ¶ 37.

[11] *See* Dkt. Nos. 9, 53, 56-57.

[12] *See* Tr. 12/16/24, p. 58:18-25.

[13] *Id*., p. 103:21-23 (emphasis added).

10. On July 12, 2024, Hopeman filed its Plan of Liquidation. Hopeman explained that the Liquidating Plan "provides for an orderly wind-down of Hopeman, which has had no business operations since 2003 and has existed, as of the Petition Date, solely to defend and settle (when appropriate) Asbestos PI Claims."[14] Hopeman further disclosed that:

> [t]he fact that the Debtor no longer maintains any business operations suggests that a reorganization or liquidation on terms substantially different than those currently proposed under the Plan may be improbable or infeasible. As a result, any attempt to propose an alternative plan containing different terms for any of these parties may not be confirmable and could delay and/or dilute distributions to creditors.[15]

11. Hopeman's status as a liquidating debtor with no ongoing business operations is undisputed. Months ago, the Committee acknowledged exactly that, arguing to this Court that "***the Debtor has no ongoing business . . . to rehabilitate or reorganize***."[16] The Committee further recognized that:

> ***[t]his case is a chapter 11 liquidation of a debtor with no business operations***; ***it exists solely to manage its asbestos liabilities***. And, although the Debtor has insurance coverage that it is seeking to monetize, it has 'no other assets that it must decide to keep or sell, no unexpired leases or executory contracts that it must decide to assume or reject, no employees it must decide to retain or discharge and ***no business to restructure***.'[17]

---

[14] Dkt. No. 57, p. 6-7 of 148.

[15] *Id*., p. 32 of 148.

[16] Dkt. No. 342, p. 2, ¶ 1 (emphasis added).

[17] *Id*., p. 4-5, ¶ 9, citing *In re GMG Cap. Partners III, L.P*., 503 B.R. 596, 601 (Bankr. S.D.N.Y. 2014) (emphasis added). The Committee since has attempted to distance itself from these admissions, asserting that they should be ignored because they were made in the context of the Liquidating Plan. Regardless of the Chapter 11 plan at issue, every one of those factual assertions remain the same.

II. Asbestos Claims Against Hopeman and Hopeman's Insurance Coverage.

12. Since the late 1970s, Asbestos Claims have been made against Hopeman by persons alleging that they suffered personal injuries from exposure to asbestos contained in marine interior materials provided by Hopeman.[18] Asbestos Claims include lawsuits in the tort system and out-of-court claims processed pursuant to administrative agreements by Hopeman's claim administrator, Special Claims Services, Inc. ("SCS").[19]

13. Hopeman's liability insurance program applicable to Asbestos Claims consists of primary layer insurance policies issued by Liberty Mutual Insurance Company ("LMIC") from 1937 through 1984 and multiple layers of umbrella and excess insurance policies issued by LMIC and other insurers, including the Chubb Insurers, from 1965 through 1984.[20] Century issued 10 excess and umbrella policies to Hopeman from 1965 through 1984. [21] Westchester Fire issued 2 umbrella policies to Hopeman from 1983 through 1984. [22] (The Century policies and Westchester Fire policies together are the "Chubb Insurers' Policies.")

14. There is no duty to defend under any of the Chubb Insurers' Policies. Of the 10 Century policies, only 3 provide for reimbursement of Hopeman's covered defense costs. Neither of the Westchester Fire policies provides for reimbursement of Hopeman's defense costs.

---

[18] Disclosure Statement, p. 7-8.

[19] *Id*.

[20] Dkt. No. 8, Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc. ("Lascell Decl."), ¶ 30.

[21] *See* Dkt. No. 9, Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release between the Debtor and the Chubb Insurers; (II) Approving the Assumption of the Settlement Agreement and Release between the Debtor and the Chubb Insurers; (III) Approving the Sale of Certain Insurance Policies; (IV) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief (the "Settlement Approval Motion") at Doc. p. 54 of 77.

[22] *Id*.

15. Hopeman's excess insurance policies, including the Chubb Insurers' Policies, are reimbursement policies whereby Hopeman is responsible for paying the costs for its defense and resolution of Asbestos Claims in the first instance and then submitting covered portions for reimbursement from its insurers, including the Chubb Insurers, for their allocated share of reimbursement of Hopeman's payments.[23]

16. Century, Westchester Fire, and Hopeman are signatories to the Wellington Agreement, a well-known and longstanding agreement which numerous asbestos producers (including Hopeman) and insurance carriers entered into on or about June 19, 1985, to provide an alternative to the court system, reduce legal costs, and resolve certain coverage issues with respect to Asbestos-Related Claims.[24]

17. Pursuant to the Wellington Agreement, "participating insurers' obligations for Asbestos-Related Claims, including for payment of defense costs and indemnification of liability payments incurred by Hopeman, were spread pro-rata across all insurance policies from a claimant's date of first exposure across a 'coverage block' which, in Hopeman's case, eventually extended to 1984."[25] As relevant here, key features of the Wellington Agreement include:

- The subscribers' express agreement to forego all extra-contractual claims relating to insurance for asbestos bodily injury claims, including contribution/indemnification and bad faith/punitive damages claims; and
- Creation of a coverage block system for identifying which policies are obligated to pay which claims, and when a given policy's coverage exhausts. Thus, for each producer (in

[23] 12/16/24 Tr. p. 61:17-24 (Mr. Van Epps) ("Hopeman pays those claims . . . and then submits the[m] for reimbursement to the excess carriers . . . and recovers a portion of the amount that they paid for the underlying claims. Q. So these are reimbursement policies? A. They are. Q. Which means the debtor has to advance money? A. Correct.").

[24] *See Porter Hayden Co. v. Century Indem. Co.*, 136 F.3d 380, 381 (4th Cir. 1998) ("the Wellington Agreement [ ] was written to govern disputes between certain asbestos producers and asbestos insurers"). *See also* Settlement Approval Motion, ¶ 13.

[25] Lascell Decl., p. ¶ 32.

this case, Hopeman), there is a roster of insurance policies ("Schedule D") for the period of the producer's first involvement with asbestos or asbestos-containing products through June 19, 1985.[26] The Wellington Agreement's Schedule D outlines the agreed terms of coverage for each policy on the schedule, including applicable limits, deductibles, and whether the policy has an obligation to pay defense costs (and, if so, whether defense costs erode policy limits or are paid in addition to limits). Each producer was then obligated to identify an initial coverage block within that coverage period, which would respond on a "bathtub" basis[27] to asbestos claims triggering that coverage block. By the time Hopeman asked its umbrella/excess insurers (including Century and Westchester) to participate, its coverage block was 1/1/65 – 1/1/85.[28]

18. In 2003, Hopeman approached its first-layer excess insurers, including Westchester Fire, to advise that it had reached a settlement with its primary insurer LMIC, which allegedly exhausted LMIC's products limits as of 2007 and bought out LMIC's obligations for non-products exposures – *i.e.*, exposures allegedly arising during Hopeman's operations such as installing marine interiors – to which only per-occurrence but not aggregate limits applied.[29] After confirming the exhaustion of the applicable aggregate limits in the LMIC primary policies and

---

[26] Generally, by 1985, insurers and policyholders in the U.S. began excluding coverage for asbestos-related liabilities under general liability policies.

[27] The Second Circuit noted that the "'rising bathtub' allocation . . . describe[s] a provision of the Wellington Agreement that deals with how asbestos bodily injury losses would be allocated to insurers. That provision calls for asbestos payments to be allocated on the basis of horizontal exhaustion, which means losses are allocated to the lowest layer of coverage first and, like a bathtub, fill from the bottom layer up. Under that approach, a given layer of coverage is not implicated until the layer beneath it is completely exhausted." *N. River Ins. Co. v. ACE Am. Reinsurance Co.*, 361 F.3d 134, 138 (2d Cir. 2004). As another trial court explained, "[u]nder a 'bathtub' allocation methodology, policies are metaphorically stacked in a bathtub according to their excess layer, while the insured's liability is poured into the tub. Any policies that are 'underwater' are paid out to their limit, while policies that are 'dry' are not triggered" [*i.e.*, they are not responsible for paying defenses costs and/or indemnifying claims]. *Lexington Ins. Co. v. Clearwater Ins. Co.*, No. CIV.A. 09-0234C, 2011 WL 3715546, at *3 (Mass. Super. July 27, 2011).

[28] The Wellington Agreement is subject to a confidentiality order in this case, so the Chubb Insurers do not attach it here. Debtor, as a party to the Wellington Agreement, has a copy of it, and the Chubb Insurers understand that the Committee received a copy of the Wellington Agreement in 2024 as part of its discovery in this case regarding the Chubb Insurers' and Certain Insurers' Settlement Agreements. The Chubb Insurers will provide a copy of the Wellington Agreement to the Court upon request, as well as to any other party in interest who executes the operative confidentiality agreement.

[29] Declaration of Patricia Santelle in Support of the Chubb Insurers' Objections to Final Approval of the Disclosure Statement and Confirmation of Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code ("Santelle Decl."), ¶ 2.

with the understanding that the Westchester Fire policies would apply and be billed for indemnity pursuant to the Wellington Agreement (pro rata based upon date of first exposure through 1984)[30], Westchester Fire began participating in the reimbursement of Hopeman's settlements of Asbestos-Related Claims.[31]

19. In 2007, Hopeman began billing Century under its second-layer excess/umbrella policies.[32] Century and Hopeman disagreed as to whether the underlying LMIC coverage was properly exhausted in light of Hopeman's non-product/operations exposures that were not subject to the aggregate limits of the underlying LMIC primary policies.[33] To address this and other coverage issues, Century and Hopeman engaged in alternative dispute resolution ("ADR") proceedings as required by the Wellington Agreement.[34] Mr. Van Epps explained to this Court the "myriad" disputed coverage issues between Hopeman and its excess insurers, including Century:

> A myriad of issues that run from product/nonproduct, exhaustion of underlying coverage, how defense is treated, whether defense is covered by the policy. If it's covered, is it within the limit? Is it in addition to the limit? If it's a multiyear policy, which a number of excess policies span three years, it is annual limits, or is it one limit for the entire three-year period? If there's a stub period and it runs not for twelve months, but fourteen months, is that at new limit for the next two months, or is it prorated for fourteen months. So that's just an example of the number of issues that . . . have been raised.[35]

---

[30] *See* n. 26, *supra*. *See also* 11/14/24 Tr. p. 79:16 – 80:12 (Mr. Van Epps).

[31] Santelle Decl., ¶ 3.

[32] *Id*., ¶ 4.

[33] *Id*..

[34] *See Porter-Hayden*, 136 F.3d at 381 (quoting and enforcing Wellington Agreement provision that "[Signatory Insureds and Insurers] shall resolve through alternative dispute resolution . . . any disputed issues within the scope of the Agreement and the Appendices hereto").

[35] 12/16/24 Tr., p. 59:14-60:1.

Mr. Van Epps testified that these issues are "very complicated" and "difficult and very fact intensive and time consuming" to resolve.[36]

20. The Hopeman-Century ADR proceedings addressing these "very complicated" coverage issues ultimately resulted in the 2009 Settlement Agreement regarding allocation of loss payments and defense costs, as well as the applicable limits and defense treatment under Century policies along with other coverage issues. Pursuant to the 2009 Settlement Agreement, Hopeman fully "release[d] and forever discharge[d]" Century policy nos. XCP-143410, XCP-143696, and XCP144541 "with respect to any and all coverage incepting above $50 million of underlying annual coverage."[37] Hopeman and Century further agreed on certain discounts on Hopeman's reimbursement claims to account for non-products exposures and Hopeman's release of LMIC coverage for those exposures.[38]

21. Under the 2009 Settlement Agreement, Hopeman and Century expressly agreed that the Wellington Agreement would continue to apply:

> Except to the extent inconsistent with this Agreement, the Wellington Agreement shall remain in full force and effect between Hopeman and Century. Except as expressly set forth herein, this Agreement is not intended, nor may it be construed, to modify, alter or amend in any manner the rights, remedies, responsibilities and/or duties of any Party hereto under any policies of insurance issued to Hopeman or under the Wellington Agreement. . . .[39]

---

[36] *Id*., p. 60:2-61:10.

[37] Santelle Decl., ¶ 5, Ex. A. *See also* 7/1/25 Lascell Tr., p. 129:11-14 (acknowledging that Hopeman fully released certain policies pursuant to the 2009 Settlement Agreement).

[38] *Id*.

[39] *Id*., Ex. A, ¶ 19.

In addition, Hopeman and Century agreed that "[n]o change or modification of this Agreement shall be valid unless made in writing and signed by the Parties [ ] whose interests are affected by such change or modification."[40]

22. Hopeman's bankruptcy petition was filed almost 40 years after Hopeman and certain of its insurers, including the Chubb Insurers, entered into the Wellington Agreement. As of the petition date, the Chubb Insurers and Hopeman had been performing pursuant to the terms of the Wellington Agreement for several decades and, in the case of Century specifically, the 2009 Settlement Agreement for over 15 years.

23. After settling with LMIC in 2003, Hopeman managed its own defense and resolution of Asbestos Claims along with its third-party claims administrator, SCS.[41] Hopeman funded its defense and resolution of Asbestos Claims in part from reimbursement from its liability insurance program, with the remainder being self-funded by Hopeman because (a) some of Hopeman's insurance coverage was issued by now-insolvent insurers, (b) claimants alleged injuries that took place, in part, during periods where Hopeman previously settled insurance coverage for less than applicable policy limits such that those insurers no longer participated and Hopeman "stood in the shoes" of those insurers, and/or (c) other coverage issues between Hopeman and the insurers (including the Chubb Insurers) were governed by CIP Agreements, including the Wellington Agreement and the 2009 Agreement, whereby Hopeman was required to pay some portion of an Asbestos Claim based on the agreements' terms.[42]

---

[40] *Id*., Ex. A, ¶ 21.

[41] Lascell Decl., ¶¶ 18, 25-28. *See also* 7/1/25 Lascell Tr., 126:8-16 (since 2003, neither the Chubb Insurers nor any other Hopeman insurer controlled or actively defended Hopeman pre-petition).

[42] *Id*., ¶ 32-36.

24. For these reasons, prepetition, Hopeman spent more for defending and paying Asbestos Claims than it received in reimbursement from its insurers with remaining limits, including the Chubb Insurers.[43] Pursuant to the Chubb Insurers' CIP agreements and the Wellington Agreement, the Chubb Insurers' collective share of claim payment reimbursements in 2023 was approximately 33.52%.[44] Century's share of defense cost reimbursements in 2023 under the three Century policies that provide defense coverage was approximately 17.51%.[45] Westchester Fire paid no share of defense cost reimbursements because there is no defense obligation under the Westchester Fire policies.

III. Hopeman's Bankruptcy-Related Settlement with the Chubb Insurers.

24. Between 2020 through 2023, Hopeman's asbestos-related claim payments and defense costs totaled over $52 million, with payments to claimants totaling $30 million and defense costs totaling $22 million.[46] In 2023, Hopeman spent over $12 million in combined claim payments and defense costs, consisting of $6,362,000 in claim payments and $5,946,060 in defense costs.[47] Hopeman received $6.6 million (55%) in reimbursements from its insurers, including the Chubb Insurers, "resulting in an annual cash burn of approximately $5.5 million"[48] for the share of defense and claim payments for which Hopeman is responsible.

25. After years of Hopeman covering its share of defense costs and claim payments for Asbestos Claims, its cash reserves (essentially consisting of the 2003 LMIC settlement proceeds)

---

[43] Lascell Decl., ¶ 35.

[44] *See* Bankr. Dkt. No. 57, Disclosure Statement with Respect to the Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, p. 12.

[45] *See id*.

[46] Disclosure Statement, p. 10.

[47] *Id*.

[48] *Id.*

neared depletion in early 2024.[49] Thus, in early 2024, Hopeman advised the Chubb Insurers that it planned to file a liquidating Chapter 11 bankruptcy case and requested that the Chubb Insurers negotiate with Hopeman towards a settlement of the Chubb Insurers' coverage obligations so that Hopeman could use the proceeds of the Chubb Insurers' policies to fund a liquidating trust that would resolve Asbestos Claims pending against Hopeman.

26. Over the course of six months, Hopeman and the Chubb Insurers "conducted extensive, good faith negotiations. . . for the purpose of resolving the Debtor's remaining, unexhausted policies issued by the Chubb Insurers."[50] These efforts proved successful and ended in an agreement for the Chubb Insurers to buy back the Chubb Insurers' Policies for a purchase price of $31,500,000.00 (the "Settlement Amount") under sections 363(b), (f), and (m) of the Bankruptcy Code, with the settlement proceeds to be used to pay holders of Asbestos Claims.[51] The Chubb Insurers spent many hours and many thousands of dollars to investigate, analyze, negotiate, draft, and finalize the Chubb Insurers' Settlement Agreement.

IV. Hopeman Settles with the Chubb Insurers as Part of Hopeman's Chapter 11 Petition Because it Would Avoid a "Race to the Courthouse" by Asbestos Claimants, which is Exactly the Concern Acknowledged by the Court when it Approved the Certain Insurers' Settlement Agreement.

27. On the Petition Date, Debtor explained that it was "in its best interest, as well as in the best interest of holders of Asbestos-Related Claims," to commence a Chapter 11 proceeding because "[w]ith Hopeman unable to continue managing the defense and resolution of the Asbestos-

[49] *Id*.

[50] Dkt. No. 9, Settlement Approval Motion, ¶ 18. *See also* Disclosure Statement, p. 11 (same).

[51] *Id*.

Related Claims upon exhausting its available cash, it would create the classic 'race to the courthouse' for claimants to recover remaining insurance proceeds."[52]

28. At the same time, Hopeman filed the Settlement Approval Motion pursuant to Bankruptcy Rule 9019 and § 363, averring that it "reviewed, among other things, the Policies and applicable law and determined in its sound business judgment that the $31,500,000 Settlement Amount pursuant to the Chubb Insurer Settlement Agreement is fair and equitable and in the best interest of the Debtor's estate."[53] Hopeman asserted that the Chubb Insurers' Settlement Agreement "will enable the Debtor to arrange for an orderly distribution of those monies to claimants who both have asserted, and are likely to assert, Asbestos Claims against the Debtor while avoiding the costs of litigating or otherwise resolving disputes with Chubb over the availability of coverage."[54]

29. On July 10, 2024, Hopeman filed a motion seeking approval of a settlement with certain other Hopeman insurers (the "Certain Insurers Settlement")[55] (together with the Settlement Approval Motion, the "Insurance Settlement Motions"). The Certain Insurers' Settlement mirrors the Chubb Insurers' Settlement Agreement in substance and form, and the Rule 9019/§ 363 relief requested by Hopeman with respect to the Certain Insurers' Settlement is the same as the relief requested in the Settlement Approval Motion. Also on July 10, 2024, Hopeman moved to establish procedures for noticing the Insurance Settlement Motions and to schedule a date for the Insurance Settlement Motions to be heard at the same time.[56]

---

[52] Lascell Decl., ¶ 37. *See also* Disclosure Statement, p. 10 (same).

[53] Settlement Approval Motion, ¶ 27.

[54] *Id*., ¶ 22.

[55] Dkt. No. 53.

[56] Dkt. No. 54. *See also* Disclosure Statement, p. 11 (same).

30. The Unsecured Creditors Committee (the "Committee") was appointed on July 22, 2024. Soon thereafter, the Committee asserted that it needed to "vet[ ] the proposed insurance settlements for the benefit of those creditors for whom it is an estate fiduciary," asserting that "the proposed settlement amounts are unreasonably low" under ***both*** settlements based on the "total available coverage."[57]

31. Hopeman and the Committee agreed to a discovery and briefing schedule regarding the Insurance Settlement Motions, and the hearing date for both Insurance Settlement Motions was ultimately set for December 16, 2024.[58]

32. Notwithstanding the Committee's recognition just two months earlier that "[t]his case is a chapter 11 liquidation of a debtor with no business operations" and "no business to restructure,"[59] on November 8, 2024, the Committee asserted that Hopeman's proposed Plan of Liquidation "is deficient and unconfirmable."[60] The Committee threatened that, "[t]here is no point in having extended litigation over a plan that asbestos creditors are likely to vote down."[61] Debtor's 30(b)(6) witness, Mr. Lascell, explained that this was because the Committee – at least, the attorneys representing the Committee members – wanted to pursue a § 524(g) plan from the beginning –*i.e.*, a plan of ***reorganization*** with a supplemental discharge injunction.

33. Unbeknownst to the Chubb Insurers at the time, Debtor and the Committee entered

---

[57] Dkt. No. 120, p. 7-8, 14. As Mr. Van Epps testified during the hearing on approval of the Certain Insurers' Settlement Agreement, "while it's nice to say, look, I have a hundred million dollars of this coverage over here. Why aren't you getting it? Just because the[insurers] wrote it, doesn't mean I can access it and I can get to it. And it's – it's – ***it attaches a certain level, and you have to follow the terms of the insurance contract in order to access that coverage***." 12/16/24 Tr., p. 65:1-14.

[58] Dkt. No. 376. *See also* Disclosure Statement, p. 11 (same).

[59] *See* ¶ 11, *supra*.

[60] Dkt. No. 342, p. 6, ¶11.

[61] *Id*., p. 2, ¶ 3.

into a Settlement Term Sheet on November 29, 2024 to "set forth certain essential terms for addressing the Insurer Settlement Motions . . . and of a potential Plan that would settle the liability of the Debtor for Channeled Asbestos Claims."[62] Debtor and the Committee agreed that (i) the Committee would not oppose the Certain Insurers' Settlement approval motion, (ii) the Debtor would request that the Court adjourn the hearing ***only*** as to the Chubb Insurers' Settlement Approval Motion and "indefinitely" suspend the related dates and deadlines for that motion, (iii) Debtor and the Committee would jointly request "that the Court order mediation for the purpose of attempting to reach a consensual resolution of the Chubb Motion" that included the Chubb Insurers; and (iv) Hopeman and the Committee would "negotiate in good faith over the terms of a Plan that would propose to create a Trust pursuant to § 524(g) of the Bankruptcy Code."[63]

34. At Debtor's request, the hearing on the Chubb Insurers' Settlement Approval Motion was adjourned to March 20, 2025 and the related discovery and briefing deadlines were adjourned indefinitely.[64] Debtor successfully prosecuted the Certain Insurers' Settlement motion at the December 16, 2024 hearing.[65] The Committee did not object to approval of the Certain Insurers' Settlement, despite previously asserting that it was "too low" in relation to Certain Insurers' policy limits, just as it had with respect to the Chubb Insurers' Settlement Agreement.

35. During the Certain Insurers' Settlement approval hearing, Debtor's principal, Mr. Lascell, testified that Hopeman filed its Chapter 11 petition and pursued the Chubb Insurers' Settlement Agreement and the Certain Insurers' Settlement Agreement to "put the biggest value of assets that we had into a liquidation trust that would be available to all [ ] claimants" rather than

---

[62] Dkt. No. 417 at Ex. 1.

[63] *Id*. *See also* Disclosure Statement, p. 12 (same).

[64] Disclosure Statement, p. 12.

[65] *Id*.

keep Hopeman out of bankruptcy and "just let[ting] the claimants who have direct action claims bring those" in the tort system, because "that scenario would leave out claimants who didn't have . . . direct-action claims," which "we didn't view [ ] as a fair settlement."[66]

36. The Court approved the Certain Insurers' Settlement based, in part, on the Court's concern regarding the "race to the courthouse issue:"

> it appears to the Court that there are potentially two classes of asbestos claimants, one of which who have direct access or direct claims against the policies and others who don't. The Court has had some concern about the race to the courthouse issue here, and the debtor has alluded to the desire to have all claimants be on equal footing. The Court shares that desire.[67]

37. Subsequently, the Court denied Huntington Ingalls Industries' motion for a stay pending appeal of the Certain Insurers' Settlement Approval Order based on the Court's finding, among other things, that "[a]llowing some creditors to access coverage while others are prohibited from doing so directly contravenes the fundamental principle that a bankruptcy filing terminates the 'race to the courthouse' that would exist outside of bankruptcy."[68] The Court specifically noted that:

> The differences in direct action rights among the Debtor's creditors causes inequities the Debtor is actively trying to prevent through the monetization of the Policies pursuant to the Settlement Agreements and the creation of the Liquidation Trust. The Debtor's overarching goal in this chapter 11 case is to put all its asbestos creditors on equal footing with respect to their Asbestos-Related Claims to maximize recoveries on account of all Allowed Asbestos-Related Claims, not simply those with direct action claims. This is precisely why the Certain Settling Insurers Settlement Agreement is in the best interests of all the Debtor's creditors and should be approved.[69]

---

[66] 12/16/24 Tr., p. 32:9-17.

[67] *Id.*, p. 194:19-25.

[68] Dkt. No. 526, p. 10.

[69] *Id.*, p. 10 n. 12, quoting Debtor's Omnibus Reply, Dkt. No. 426, p.15, ¶ 29.

V. Hopeman Pivots from a Plan of Liquidation to a § 524(g) Reorganization Plan.

38. Debtor, the Committee, and the Chubb Insurers were ordered to mediate the relief sought in the Chubb Insurers' Settlement Approval Motion.[70] The Chubb Insurers, Debtor, and the Committee participated in a single in-person mediation session on January 22, 2025.[71] The so-called "Chubb Insurers' Mediation" continued for six weeks thereafter, but the Chubb Insurers were intentionally excluded from those "mediation" efforts.[72] The Chubb Insurers subsequently learned that after the first mediation session on January 22, 2025, the "Chubb Insurers Mediation" became a negotiation between Debtor and the Committee regarding a § 524(g) plan.[73]

39. Despite Debtor's previous position that its Chapter 11 plan was "not being proposed pursuant to section 524(g) of the Bankruptcy Code" because "Debtor has no ongoing operations and no ability to contribute to a future claims trust," Debtor decided to pursue a § 524(g) plan because that is what the Committee – at least, counsel representing the individual Committee members – wanted.[74]

40. On March 7, 2025, Debtor filed a Motion for Expedited Status Conference, attaching the Settlement Term Sheet for § 524(g) Plan of Hopeman Brothers, Inc. (the "Settlement Term Sheet") that was agreed upon by Debtor and the Committee without the Chubb Insurers' knowledge or consent. Debtor and the Committee agreed to "work cooperatively to include in the

---

[70] Disclosure Statement, p. 12.

[71] Davis Decl., Dkt. No. 595, ¶ 5.

[72] *Id*., ¶ 6.

[73] *Id. See also* Disclosure Statement, p. 12 ("The Mediation resulted in the 524(g) Settlement -- an agreement between Hopeman, the Committee and HII but not an agreement with the Chubb Insurers.")

[74] *See* 3/10/25 Tr., p. 7:20-23 ("Clearly, the creditors committee and other creditors want to have a broader process to potentially bring in additional claimants who might manifest the disease later."); Dkt. No. 417 at Ex. 1.

Plan terms, provisions, and conditions that [ ] will effectuate the agreements contained in this 524(g) Term Sheet."[75]

41. During the March 10, 2025 status conference, Debtor's counsel advised that Debtor had filed the Settlement Term Sheet describing "a plan that we hope to. . . form and prosecute, to establish a trust under Section 524(g) of the Bankruptcy Code," and that the "full implementation of the term sheet contemplates the debtor drafting or redrafting its plan, the committee drafting trust distribution procedures, and then jointly filing a disclosure statement and plan."[76] Debtor's counsel explained that "[w]e're not here today asking you [to] approve the term sheet."[77]

42. According to Debtor, the Settlement Term Sheet was a "pivot from the liquidating plan we previously filed with the Court," but Debtor's description of the § 524(g) plan makes clear that it still effectuates Debtor's liquidation:

> - "[t]he revised form of the plan will still contemplate that the debtor would transfer its cash, its insurance coverage, its books and records over to, in this case, the reorganized debtor or the trust";
>
> - "[a]t effective date the shares [in] the debtor would be canceled, and the new shares in the reorganized debtor would be owned by the trust. So the debtor would be completely owned by the trust at that point and controlled by it";
>
> - "[s]o at that point, the current directors and officers would exit stage left. They would not have any role going forward. . . [t]here would be an indemnity from the trust to make sure that it is final for the former and current D&Os, but there should be no continuing role going forward."
>
> - "[t]he second goal. . . was to make sure that there was a mechanism to wind-down the debtor's defense and claims administration process, and this puts an end to it. As I said, the

[75] Bankr. Dkt. No. 609, Ex. B, ¶ C.1.

[76] 3/10/25 Tr., p. 4:13-21.

[77] *Id*., p. 4:25.

> debtors' [sic] operations will go away. It'll all be handed over to the trust."[78]

43. Debtor explained that the § 524(g) plan will "allow[ ] parties to go back to the tort system," such that "plaintiffs could sue the [reorganized] debtor in the tort system," and "[d]irect action claimants can bring their claims against the debtor and against insurers."[79] Asbestos Claimants thus will "seek coverage essentially for their claims through the tort system"[80] – just as they did pre-petition.

44. Debtor further represented that the Plan would be "insurance neutral," such that "whatever insurance coverage exists will be passed along to the reorganized debtor and the trust. It won't be amended. It won't be affected. It will stay in place. And that includes the coverage-in-place agreements that are currently in pla[ce]."[81] Debtor asserted that "[i]t's not seeking to modify the policies. It's not seeking to affect defenses that the insurers may have. . . we're just trying to pass along to the reorganized debtor and the trust what we have. We're not trying to change that."[82]

45. While "neutrality" may have been Debtor's intention, it did not follow through to the Plan. As explained below, the Chubb Insurers' policy rights and coverage-in-place agreements will be significantly "amended" and "affected" by the Plan once Debtor "exits stage left" and leaves Reorganized Hopeman and the Trust in the hands of the claimants' counsel and their selected representatives.

---

[78] *Id.*, p. 5:20-6:13, 14:7-11.

[79] *Id.*, p. 8:13-19.

[80] *Id.*, p. 9:11-12.

[81] *Id.*, p. 10:15-20.

[82] *Id.*, p. 10:21-11:1.

VI. The Proposed Plan and Plan-Related Activity.

46. On April 29, 2025, Debtor filed the proposed Plan and Disclosure Statement, along with the Solicitation Procedures Motion and a Motion to Appoint Marla Rosoff Eskin as the Future Claimants' Representative ("FCR").[83] "The Plan incorporates the terms of the 524(g) Term Sheet"[84] described above.

47. Pursuant to the Plan, Reorganized Hopeman will be wholly owned by the Trust.[85] Hopeman's current officers and directors are deemed to resign on the Effective Date[86], and the sole director of Reorganized Hopeman will be Matthew T. Richardson of the Wyche, P.A. law firm, who also will serve as the Trust's Litigation Trustee.[87] Debtor will assign its rights in the Chubb Insurers' Policies and other Non-Settling Asbestos Insurers' Policies, along with its rights in Asbestos CIP Agreements and other "Asbestos Insurance Rights," to the Trust, though Debtor and the Committee refused to identify the specific agreements falling within the definition of an Asbestos CIP Agreement. The Trust will be overseen by members of the Committee that will form a "Trust Advisory Committee," along with the FCR.

48. The Plan provides that Asbestos Claims will be channeled to the Trust for "resolution, liquidation, and payment" (the "Channeled Asbestos Claims").[88] In fact, **only** Uninsured Asbestos Claims will be resolved, liquidated, and paid by the Trust. Insured Asbestos Claims will be resolved and liquidated in the tort system, and the "sole source of payment or

---

[83] *See* Dkt. Nos. 689-692.

[84] Disclosure Statement, p. 13.

[85] Plan § 8.6.

[86] *Id*., § 8.7.

[87] *See* Dkt. No. 853, Amended Trust Agreement, Doc. Page 54 of 239; Amended and Restated Articles of Incorporation of Hopeman Brothers, Inc., Art. V., Doc. Page 193 of 239.

[88] Plan, § 8.12(h).

recovery" for such claims is from Non-Settling Asbestos Insurers.[89] According to the Committee, "it will be up to each Channeled Asbestos Claimant contemplating an action under section 8.12 or section 8.13 of the Plan to determine whether his Channeled Asbestos Claim satisfies the definition of 'Insured Asbestos Claim.'"[90]

49. In contrast to Debtor's promise to put all holders of Asbestos Claims on equal footing, and the Court's recognition of that goal, the Plan provides for three different means of recovery for holders of Asbestos Claims, depending on the nature of their claims, ***with vastly disparate potential recoveries***:

a. Uninsured Asbestos Claims will be resolved and paid by the Trust. They will be liquidated at an unspecified "historical average value" for their disease level, subject to a not-yet-established payment percentage that will be set by the Trust to ensure that current and future claims are treated similarly.

   The sole source of recovery for Uninsured Asbestos Claims are the $18.5 million Certain Insurers' Settlement proceeds, as substantially reduced by (i) the undisclosed amount of Net Reserve Funds, which include the estate's unpaid administrative expenses that were approximately $8.9 million as of May 31, 2025[91], $250,000 in Trust start-up costs, $350,000 for Reorganized Hopeman's post-Effective Date business "investment," and $150,000 for Reorganized Hopeman to invest in "high quality fixed income securities,"[92] (ii) the Trust's initial $150,000 transfer and subsequent transfers "as necessary" of "working capital" to Reorganized Hopeman,[93] and (iii) the Trust's operating expenses, including payments for the Administrative Trustee and his professionals, the TAC and its professionals, the FCR and her professionals, and the Trust's administrative expenses, likely to be hundreds of thousands per year.

b. Insured Asbestos Claims without Direct Action Rights will be filed in the tort system, "suing the Reorganized Debtor in name only" and the Trust "shall provide notice of such action, as appropriate, to all Non-Settling Insurers."[94] Despite that

---

[89] Plan § 8.16.

[90] Ex. B, Committee Response to Interrogatory No. 2.

[91] *See* Dkt. No. 910, p. 2.

[92] Dkt. No. 853, Plan Supplement, Ex. F (Restructuring Transaction).

[93] *Id*., Amended Trust Agreement, § 3.2(k).

[94] Plan § 8.12(b).

Reorganized Hopeman will be named as a defendant in lawsuits to establish Hopeman's liability, the Trust and Reorganized Debtor will not "answer, appear, or otherwise participate" in those lawsuits.[95]

After obtaining a judgment against Reorganized Hopeman, the Insured Asbestos Claimant may commence a judgment-enforcement action against relevant Non-Settling Asbestos Insurers to recover for their claims.[96] Except with respect to holders of Insured Asbestos Claims seeking to enforce a settlement agreement with a Non-Settling Asbestos Insurer, ***the Trust*** has "the exclusive right to pursue, monetize, settle, or otherwise obtain the benefit of the Asbestos Insurance Rights, including with respect to any unpaid insurance Proceeds applicable to a judgment or settlement obtained or entered into by a Channeled Asbestos Claimant. . . ."[97] The Trust's Litigation Trustee, "responsible for all matters relating to Trust litigation," will be responsible for pursuing such actions, and will receive 33.3% "of all funds recovered in litigation" as compensation.[98]

c. Insured Asbestos Claims – Direct Actions. Holders of Insured Asbestos Claims with direct action rights under applicable non-bankruptcy law (*i.e.*, Louisiana[99]) can assert actions directly against Non-Settling Asbestos Insurers in the tort system to "obtain the benefit of the Asbestos Insurance Coverage of any Non-Settling Insurer."[100] Because these direct action claimants can sue Non-Settling Insurers and obtain recoveries directly from the Non-Settling Insurers in the first instance, their recoveries will not be reduced by the Litigation Trustee's 33.3% contingency fee.

50. The Chubb Insurers' Settlement Agreement is not included in the Plan's definition of an "Asbestos Insurance Settlement;" thus, notwithstanding the Settlement Approval Motion that remains pending today, the Chubb Insurers are considered "Non-Settling Insurers" against which

---

[95] *Id*., § 8.12.

[96] *Id*., § 8.13(c).

[97] *Id*., § 8.13(a).

[98] Amended Trust Agreement, §§ 4.1, 4.5(b).

[99] Louisiana and Wisconsin are the only two states that allow direct actions against a tortfeasor's insurer(s) ***before*** a plaintiff's claim against the tortfeasor has been reduced to judgment. The Wisconsin statute applies only to insurance policies issued in Wisconsin. *Kenison v. Wellington Insurance Co*., 218 Wis. 2d 700, 582 N.W.2d 69 (Ct. App. 1998) ("A direct action against an insurer under this section is restricted by s. 631.01 to an insurer whose policy has been delivered or issued in Wisconsin.") As Hopeman was not domiciled in Wisconsin and did not have a place of business there, the Chubb Insurers are unaware of any Wisconsin-based direct action claims arising from Hopeman's liabilities.

[100] Plan § 8.12(a); § 8.13(b).

direct actions can be asserted and to which Insured Asbestos Claims will be tendered for defense and payment. According to the Plan, the Chubb Insurers' Settlement Agreement will be deemed rejected if the Plan is confirmed.

51. On May 13, 2025, the Court appointed Debtor's and the Committee's selected FCR candidate, Ms. Eskin, as the FCR. The Court overruled the Chubb Insurers' objection that Ms. Eskin should not be appointed because she and her firm have served as co-counsel with the Committee's counsel, Caplin & Drysdale, for asbestos claimants' committees in dozens of mass tort bankruptcy cases. Ms. Eskin and her firm also have represented asbestos claimants represented by counsel who represent individual Committee members in this case.

52. Six days after her appointment, Ms. Eskin agreed with Debtor and the Committee that the Plan and Disclosure Statement were "ready for solicitation in their revised form."[101] That conclusion was based exclusively on her review of the Plan, Disclosure Statement, and exhibits thereto, along with discussions with her counsel.[102]

ARGUMENT

53. " Confirmation of a Chapter 11 plan of reorganization requires that the plan satisfy all of the confirmation criteria set forth in 11 U.S.C. § 1129(a)."[103] Plan Proponents bear the burden of proving that the Plan satisfies all of the requirements for confirmation under § 1129 as well as all of the additional requirements of § 524(g).[104] "Regardless of whether a valid objection to confirmation has been asserted . . . the Code imposes upon the Court the responsibility to

[101] Dkt. No. 759, p. 12, n. 14.

[102] Ex. C., FCR Response to Interrogatory No. 2.

[103] *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 709 (4th Cir. 2011).

[104] *See In re Quigley Co*., 437 B.R. 102 124-25 (Bankr. S.D.N.Y. 2010); *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 158 (D. Del. 2006. *See also In re Smith*, 357 B.R. 60, 66 (M.D.N.C. 2006).

determine whether the requirements of § 1129 have been met."[105]

54. The Plan cannot be confirmed because it violates several requirements of § 1129 and § 524(g).[106]

I. Section 524(g) Relief is Not Permitted because Hopeman has No Existing Business to Reorganize, it is Liquidating Through the Plan, and it will Not be Engaged in an Ongoing Business if the Plan is Confirmed.

55. The central features of the Plan are an asbestos trust and channeling injunction under § 524(g), which, as explained below, would materially affect the Chubb Insurers' rights under their policies, CIP agreements, and applicable law. The Bankruptcy Code contains several specific requirements—each of which is dispositive—before such extraordinary relief may be granted. Based on the undisputed facts in this bankruptcy case, the Plan Proponents cannot satisfy several of those requirements. Therefore, the Plan cannot be confirmed.

A. Debtor is Not Entitled to a Discharge.

56. If a debtor does not qualify for a discharge of its debts under § 1141, then it is not entitled to discharge injunction under § 524(a) nor a supplemental injunction under § 524(g).[107] And under § 1141(d)(3), a corporate debtor is not entitled to a discharge if "the plan provides for the liquidation of all or substantially all of the property of the estate" and "the debtor does not

---

[105] *In re Prudential Energy Co.,* 58 B.R. 857, 862 (Bankr. S.D.N.Y. 1986).

[106] The Chubb Insurers discuss below the Plan's impacts on holders of Asbestos Claims, current and future, because the disparate treatment of those holders of Claims and Demands, and the Plan Proponents' proposed Plan that leaves holders of current Asbestos Claims worse off than they would be in a chapter 7 scenario, is *prima facie* evidence that this Plan is not proposed in good faith.

[107] *See* 11 U.S.C. §524(g)(1)(A) (court may enter "an injunction in accordance with this subsection to ***supplement*** the injunctive effect of a discharge under this section") (emphasis added). *See also In re Flintkote Co.*, 486 B.R. 99, 129 (Bankr. D. Del. 2012) ("[A] bankruptcy court may issue a channeling injunction 'to supplement the injunctive effect of a discharge under this section.' It follows then that there must be a discharge for the channeling injunction to 'supplement.'"), *aff'd*, 526 B.R. 515 (D. Del. 2014).

engage in business after consummation of the plan."[108] Both are true here, precluding a discharge under § 1141.

1. Hopeman has No Business to "Reorganize" in this Chapter 11 Case.

57. As Congress explained during the enactment of § 1141, a Chapter 11 discharge "is not granted" where "all or substantially all of the distribution under the plan is of all or substantially all of the property of the estate," and "if the business, if any, of the debtor ***does not continue***."[109] The Fourth Circuit has made clear that § 1141(d)(3) requires the "*continuation* of *a pre-petition business*" following confirmation.[110]

58. By definition, a "reorganization" is "the restructuring of a corporation with continuing operations."[111] That is "in contrast to a liquidation of the estate and distribution of the proceeds to creditors in a case filed under Chapter 11 or Chapter 7."[112] Hopeman had no business operations when it filed its Chapter 11 petition, and it has none today.[113] Hopeman has no tangible assets or inventory; it has no means of generating income through business operations; and it has no employees. Hopeman's only remaining assets are insurance policies/insurance rights, which cannot be "reorganized"[114] – the proceeds are available only to pay covered third-party claims, such that the policies can only be liquidated.

---

[108] 11 U.S.C. §1141(d)(3).

[109] S. Rep. 95-989, 130, 1978 U.S.C.C.A.N. 5787, 5916 (emphasis added).

[110] *In re Grausz*, 63 F. App'x 647, 650 (4th Cir. 2003) (emphasis in original).

[111] *Reorganization*, Practical Law Glossary Item 4-382-3757.

[112] *Id*.

[113] 7/1/25 Lascell Tr., p. 31:2-8 (Hopeman had no ongoing business on the petition date), 60:8-10 ("Q. Does Hopeman have an ongoing business right now? A. No.").

[114] "[T]he rights and obligations of the Debtor and [its insurer] under the [insurance] policy are not altered because of the Debtor's Chapter 11 filing." *In re Amatex Corp.*, 107 B.R. 856, 865-866 (E.D. Pa. 1989),

59. The reorganizational purpose of Chapter 11 is not served where there is no "ongoing business to protect."[115] As the Fourth Circuit explained in *Carolin*, the purpose of Chapter 11 is to "reorganize or rehabilitate an existing enterprise, or to preserve going concern values of a viable or existing business."[116] That is consistent with law throughout the country that a "reorganization" under Chapter 11 requires the reorganization/rehabilitation of business that existed as of the petition date, because "bankruptcy courts generally do not function as incubators for start-up enterprises."[117]

60. For example, in *In re Cinole, Inc*., the bankruptcy court explained that "Chapter 11 of the Bankruptcy Code is not an economic development program."[118] Rather, "in the case of a business Chapter 11, its purpose is to allow an existing business to be reorganized and rehabilitated."[119] The court dismissed the debtor's bankruptcy case because "[Debtor] had no existing business on [the petition date] that could be reorganized or rehabilitated in Chapter 11."[120] Similarly, in *In re 15375 Mem'l Corp. v. Bepco, L.P.*, the Third Circuit held that there was no valid Chapter 11 reorganizational purpose served in a case where debtors "have no going concerns to preserve – no employees, offices, or business other than the handling of litigation."[121] Likewise,

---

aff'd, 908 F.2d 961 (3d Cir. 1990). *See also In re Lloyd E. Mitchell, Inc.*, 2012 Bankr. LEXIS 5531, at *20 (Bankr. D. Md. Nov. 29, 2012) ("insurance contracts cannot be re-written" in bankruptcy).

[115] *Carolin Corp. v. Miller*, 886 F.2d 693, 703 (4th Cir. 1989) (dismissing Chapter 11 petition where, among other things, "Carolin was more akin to a shell corporation than a viable enterprise" and there was "nothing in the record to suggest that, at any relevant time [preceding the Chapter 11 petition], Carolin was conducting or *could* conduct business activities of any kind").

[116] *Id*. at 702, citing *In re Victory Constr. Co.,* 9 B.R. 549, 564 (Bankr. C.D. Cal. 1981).

[117] *In re Platte River Bottom, LLC*, No. 13-13098 HRT, 2016 WL 241464, at *6 (Bankr. D. Colo. Jan. 19, 2016).

[118] 339 B.R. 40, 45 (Bankr. W.D.N.Y. 2006),

[119] *Id*.

[120] *Id*.

[121] 589 F.3d 605, 619 (3d Cir. 2009).

in *Singer Furniture Acquisition Corp. v. SSMC, Inc. N.V.*, the district court concluded that "there is no real possibility of reorganization" where a debtor "is not engaged in any business and has no employees" on the petition date and has "no accounts receivable, no accounts, no inventory. . . ."[122]

61. That is precisely the case here. Hopeman has no "going concern" to preserve and it ***is not reorganizing***. Because Hopeman had no pre-petition business to "continue" after plan confirmation, it will not "engage in business after confirmation of the plan" as required by § 1141(d)(3).[123]

2. The Plan Provides for the Liquidation of All of the Property of the Estate.

62. Pursuant to the Plan, on the Effective Date, "all the existing Equity Interests in Hopeman shall be cancelled, annulled, and extinguished, and 100% of the Reorganized Hopeman Common Stock shall be authorized and issued to the Asbestos Trust."[124] Hopeman "shall transfer to Reorganized Hopeman all of Hopeman's books and records,"[125] and its only other assets, consisting of its "remaining cash" and "its interests in the remaining limits of its insurance

---

[122] 254 B.R. 46, 52–53 (M.D. Fla. 2000).

[123] *See also Spokane Rock I, LLC v. Um* (*In re Um*), 2015 WL 6684504, at *7 (Bankr. W.D. Wash., Sept. 30, 2015) ("Based on the legislative history and the cases most factually analogous to this case, the Court is persuaded that § 1141(d)(3)(B) refers to the **continuation** of a debtor's pre-petition business in the requirement that 'the debtor does not engage in business after consummation of the plan'") (emphasis in original), *aff'd*, 2016 WL 7714141, at *4 (W.D. Wash. Aug. 18, 2016) ("the Court concludes that, in the context of the bankruptcy code, the term 'business' in § 1141(d)(3)(B) means pre-petition business"); *In re Berwick Black Cattle Co*., 394 B.R. 448, 461 (Bankr. C.D. Ill. 2008) (denying confirmation because the plan, although "dressed up to look like a reorganization, . . . is in essence one of liquidation" because one debtor "is being merged out of existence, after all of its assets have been liquidated," and the "new venture" – essentially consisting of the ongoing business of the non-debtor with which debtor was merging – "cannot be considered to be a continuation of [the Debtors'] cattle business.").

[124] Plan, § 8.6.

[125] *Id*., § 8.3(l).

policies,"[126] will be transferred to, and "indefeasibly invested in," the Trust.[127] These provisions conclusively demonstrate that **Hopeman is liquidating**.

63. Debtor's counsel's explanation of the Plan confirms as much. As represented to the Court, and now reflected in the Plan:

> at effective date . . . ***the debtor would be completely owned by the trust at that point and controlled by it***. ***So at that point, the current directors and officers would exit stage left. They would not have any role going forward***. We contemplate a plan that would provide releases to them and to the former directors . . . There would be an indemnity from the trust to make sure that it is final for the former and current D&Os, but there should be no continuing role going forward.
>
> * * *
>
> The [ ] goal, Your Honor, was to make sure that there was a mechanism to wind-down the debtor's defense and claims administration process, and this puts an end to it. As I said, ***the debtors'*** [*sic*] ***operations will go away. It'll all be handed over to the trust***.[128]

64. Hopeman, as of the petition date and as constituted today, has no tangible assets, no employees, and no business operations. In other words, it has already liquidated. As demonstrated by the Plan's terms and Debtor's own description of the Plan, Hopeman is liquidating whatever remains of its "assets" through the Plan, and it will engage in no post-confirmation business operations – it is "exit[ing] stage left." That is the epitome of a liquidating debtor that is ineligible for a discharge pursuant to § 1141(d)(3).[129]

---

[126] Disclosure Statement, p. 6.

[127] Plan, §§ 8.3(a), 8.3(b).

[128] 3/10/25 Tr., pp. 6:2-13, 14:7-11 (emphasis added).

[129] *See*, *e.g.*, *In re Crown Fin., Ltd.,* 183 B.R. 719, 722 (Bankr. M.D.N.C. 1995) (dismissing Chapter 11 case where there was "no ongoing business in existence," "no going concern value to preserve," and "no realistic possibility of an effective reorganization because there is nothing to reorganize or resuscitate and no plans for anything to reorganize").

65. Because Debtor does not qualify for a discharge of its debts under §1141, it is not entitled to a discharge injunction under §524(a) nor a supplemental injunction under § 524(g).[130] Because the Plan nevertheless provides for a § 524(g) injunction, it cannot be confirmed.

B. Reorganized Hopeman's Proposed Passive Real Estate Investment Is Not an "Ongoing Business" as Required by § 524(g).

66. The Plan Proponents admit that Debtor had no business operations pre-petition and that it has none today.[131] They contend that the Plan nevertheless satisfies the "going concern" requirement of § 524(g) because Reorganized Hopeman will "invest in real estate" following confirmation of the Plan.[132] Even if a Chapter 11 debtor with no business operations could somehow qualify for a discharge by buying and operating a ***new*** business post-confirmation, that is not what is proposed for Reorganized Hopeman here. Reorganized Hopeman will not own any real estate outright, nor will it operate a real estate management business. To the contrary, Reorganized Hopeman will have no management discretion in the investment.[133] Instead, Reorganized Hopeman will make a passive investment that is no different than an individual person investing in a mutual fund.[134]

---

[130] *See Skinner*, 688 F.3d at 151 (noting bankruptcy court's conclusion that the debtor in that case "did not have a going concern, and … that without a going concern, it could not approve a trust pursuant to § 524(g)").

[131] *See* ¶¶ 8-11, above.

[132] Dkt. No. 853, Plan Supplement at Ex. F (describing "Restructuring Transaction); Disclosure Statement, p. 14.

[133] *See* 6/27/25 Tully Tr., p. 228:13-17 ("Q. . . would Hopeman have any management discretion at all? A. No. I don't think it would want it, either. I mean, they don't want to get into the weeds of like, we should be re-leasing this property at $1.28 a square foot, not $1.27 a square feet [*sic*].")

[134] *See id*., p. 224:16-225:3, with Tully errata (while there are differences between the proposed real estate investment and investing in a mutual fund, "practically, investing is investing. . . Investing in a corporation or a real estate or [ ] a mutual fund are all forms of investing. . . there's a lot of similarities").

67. According to the Plan Proponents' financial consultant, FTI, who identified the "passive" real estate investment proposed for Reorganized Hopeman, this was by design:

> Q. Is there a reason that FTI focused on passive real estate investment structures?
>
> A. Well, I mean, it could get into privilege, but, you know, we were charged with looking at businesses. And part of the things we looked at were to not have a lot of costs associated with managing the business, so a lot of, you know, administrative costs and stuff for the reorganized entity going forward. So something that was passive that could be managed to create -- you know, a business that can create income without a lot of expenses was, you know, kind of part of the mandate.[135]
>
> * * *
>
> the reorganized debtor, you know, wouldn't want to spend a lot of management time managing the day-to-day operation of the property.[136]

FTI ultimately recommended the passive Limited Partnership investment now reflected in the "Restructuring Transaction."[137]

68. In a long line of cases interpreting provisions of the Internal Revenue Code, ***the Supreme Court has held that passive investing is not engaging in a trade or business***.[138] In *Whipple,* the Supreme Court explained that, "[w]hen the only return is that of an investor, the taxpayer has not satisfied his burden of demonstrating that he is engaged in a trade or business since investing is not a trade or business."[139] Reorganized Hopeman's proposed passive

---

[135] *Id*., p. 104:1-13.

[136] *Id*., p. 105:22-24.

[137] *See* Dkt. No. 853, Ex. F (Restructuring Transaction), Doc. Page 200 of 239.

[138] *See Comm'r of Internal Revenue v. Groetzinger,* 480 U.S. 23, 27-32 (1987) ("to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity"). Bankruptcy courts have adopted that approach in determining whether a debtor is actively engaged in a business or simply earning passive income. *See*, *e.g*., *In re Voelker*, 123 B.R. 749, 752–53 (Bankr. E.D. Mich. 1990) ("Just as the non-passive investor is directly involved in those activities which generate income, the Debtors have performed a substantial amount of work on a regular basis that has helped to create the income produced by the farming operation. We therefore agree with the trustee that the Debtors' role in the corporation's farming operations is comparable to the role played by a non-passive investor, and we conclude that this level of participation suggests that the Debtors' rental income is farming income.")

[139] *Whipple v. Comm'r of Internal Revenue,* 373 U.S. 193, 202 (1963).

investment in a "minority [1.7%] ownership interest" of an apartment complex[140] does not amount to a post-confirmation "ongoing business" that can support a discharge or § 524(g) relief. As the bankruptcy court explained in *Platte River Bottom*, "[t]he rehabilitation of a business enterprise is the primary legitimate purpose of a chapter 11 case," and where debtor entities are "merely passive repositories of assets without business operations," there "are no business enterprises to rehabilitate" through Chapter 11.[141]

69. Congress modeled § 524(g) after the trust/injunction mechanism employed in the *Johns-Manville* bankruptcy case. In *Johns-Manville*, in exchange for the protection of a channeling injunction, the reorganized debtor contributed to the trust, among other things, 80% of its common stock, $2 billion in cash and securities, and the right to receive 20% of the reorganized debtor's profits for as long as necessary to pay all asbestos claims.[142] The bankruptcy court explained that "[t]he effect of this Plan will be to give the 'tort victims' the beneficial interest in the ongoing operating corporate entity. Second, the Trust is guaranteed an 'evergreen' source of funding by virtue of its 20% call on profits of the operating corporation."[143] The "imperative" of the *Johns-Manville* plan was to "ensure to the greatest degree possible the continuing viability of the reorganized corporation, which will fund the Trust, whatever the number and amount of claims happen to be."[144]

---

[140] Dkt. No. 853, Ex. F. (Restructuring Transaction), Doc. Page 200 of 239.

[141] *Platte River Bottom,* 2016 WL 241464, at *6.

[142] *See In re Joint E. & S. Dists. Asbestos Litig*., 120 B.R. 648, 652 (E. & S.D.N.Y. 1990).

[143] *Matter of Johns-Manville Corp.,* 68 B.R. 618, 621–22 (Bankr. S.D.N.Y. 1986), *aff'd sub nom. In re Johns-Manville Corp.*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.,* 843 F.2d 636 (2d Cir. 1988).

[144] *Id*. at 622.

70. Adopting the *Johns-Manville* model, Congress designed § 524(g) to provide current and future asbestos claimants with the benefit of the debtor's long-term upside potential through a trust funded, in whole or in part, by similarly substantial contributions of the reorganized debtor's stock, securities and future profits. The "implication of this [§ 524(g)(2)(B)(i)(II)] requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants."[145] Even courts that construe § 524(g)(2)(B)(i)(II) "narrowly" acknowledge that § 1129(a)(11)—the "feasibility" requirement—requires the plan proponent to demonstrate the viability of the reorganized debtor's business post-confirmation.[146] The Plan cannot satisfy this requirement.

71. If the Plan is confirmed, Reorganized Hopeman will emerge with no employees or operating assets. Its current owners will "leave Hopeman Brothers. . . and leave it all behind," and Reorganized Hopeman "will be different than the existing Hopeman Brothers."[147] Reorganized Hopeman's sole "business activity" will be a 1.7% ownership interest in the "recapitalization" of an apartment complex,[148] and its role with respect to that passive real estate investment will be to "make the investment and [ ] periodically receive income from that investment."[149]

72. There is no business reason for this purported Restructuring Transaction, which is unrelated to any business operations that Hopeman previously engaged in.[150] Indeed, Hopeman's

---

[145] *Combustion Eng'g*, 391 F.3d at 248.

[146] *See In re Quigley Co*., 437 B.R. 102, 140-43 (Bankr. S.D.N.Y. 2010) (denying confirmation of plan under section 1129(a)(11) where debtor's proposed business operations post-confirmation satisfied section 524(g)(2)(B)(i)(II) but prospects after five years were uncertain).

[147] 7/1/25 Lascell Tr., p. 85:2-4, 85:12-15.

[148] Dkt. No. 853, Ex. F (Restructuring Transaction), Doc. Page 200 of 239.

[149] 7/1/25 Lascell Tr., p. 119:18-24.

[150] *Id*., p. 119:25-120:22.

current President played no role in identifying the proposed investment, nor did he or anyone else at Hopeman decide which investment option should be chosen.[151] That is because the investment has nothing to do with reorganizing Hopeman and creating a viable business; rather, as Mr. Lascell explained, "this is what my counsel [and] the committee have come up with to satisfy [the ongoing business] requirement" of § 524(g).[152] That is antithetical to the purpose of § 524(g) and a Chapter 11 reorganization.

73. The Plan Proponents have relied on *Flintkote* as alleged support for their position that § 524(g) debtors "regularly acquire interests in business in bankruptcy," including real estate investments, to satisfy the "going concern" requirement of § 524(g).[153] Beyond the fact that *Flinkote* is an out-of-circuit case that is inconsistent with the Fourth Circuit's decisions in *Carolin* and *Grausz* requiring a reorganizing debtor to continue a pre-petition business, Debtor's purported "reorganization" and the *Flintkote* debtor's reorganization could not be more different. If anything, *Flinkote* demonstrates why the proposed Plan cannot be confirmed. In *Flintkote*, the court explained that "the point of engaging in business is to provide an evergreen source of funds for the trust" to ensure that "all claimants, current and future, receive just and comparable compensation for their injuries, which is a primary purpose of § 524(g)."[154] After receiving extensive evidence

---

[151] *Id*., p. 118_22-25 ("Q. Did you or anyone else at Hopeman decide which option should be chosen? A. We did not make that ultimate decision, no.").

[152] *Id*., p. 75:3-7. *See also id*., p. 82:12-19 ("Q. Do you recall any specific conversation about the ongoing business requirement under 524(g)? A. Only. . . that it existed and [ ] this was what my counsel and the creditor committee recommended as a way to satisfy [ ] that requirement."); 3/10/25 Tr., p. 6 (Debtor's counsel explaining that "on the effective date, the parties would be moving to allow the debtor or the reorganized debtor to make an investment in income-generating business or an interest in such a business. And this is to satisfy 524(g), which requires or seems to require some contributions over time to the trust.")

[153] *See*, *e.g*., Dkt. No. 722, p. 15-16, citing I*n re Flintkote Co.,* No. 04-11300 (Bankr. D. Del. Dec. 21, 2012), Docket No. 7253; Dkt. No. 757, p. 11-12, citing *In re Flintkote Co*., 486 B.R. 99, 132 (Bankr. D. Del. 2012).

[154] *Flintkote*, 486 B.R. at 132-133.

and determining that the debtor's "real estate activities [we]re fairly considered a 'business'" and not "merely 'passive investing,'" the Court confirmed the Plan and recommended that the District Court enter the § 524(g) injunction.[155]

74. In particular, the *Flintkote* debtor owned six real estate properties that it leased to quick-service restaurants and had "plans to acquire seven additional properties by the end of the second year after the effective date."[156] The debtor actively participated in its business by, among other things, "search[ing] for properties to acquire," "evaluating tenant risk," "periodically inspecting the restaurants," "monitoring the tenant's financial performance," "collecting and distributing the rents," and conducting broader "market review, to ensure that the brands operated by [its] tenants are performing profitability."[157] The debtor also operated a second business line providing consulting and executive management services, which the Court considered as part of the debtor's "ongoing business."[158] Notably, upon confirmation, Reorganized Flintkote would "retain approximately $37.6 million in cash, $10.7 million in real estate assets, and $300,000 in other assets" that its management would ***continue*** operating. Further, the debtor presented evidence that Reorganized Flintkote would "earn $1,071 million in both annual EBIT and annual EBITN in the third year, post-effective date and beyond," such that the court found that those future earnings, combined with $300 million in cash that debtor would contribute to the Trust upon

[155] *Id.* at 133, 147.

[156] *Id*. at 133.

[157] *Id*. at 133-134.

[158] *Id*. at 134.

confirmation, were sufficient to "meet the express funding requirements of § 524(g)(2)(B)(i)(II)."[159]

75. Here, by contrast, Reorganized Hopeman will not engage in any active business operations, and the projected returns on its business "investment" are wholly insufficient to satisfy the § 524(g) requirement that Reorganized Hopeman "make future payments" to the Trust, including dividends. When the Plan and Disclosure Statement were filed on April 29, 2025, Reorganized Hopeman was projected to earn less than a total of $100,000 in net income from this "investment" between 2026-2030.[160] According to the Plan Proponents' Revised Reorganized Hopeman Projections, Reorganized Hopeman's "cumulative cash flow" from (a) its "minority ownership interest" in the apartment complex and (b) "anticipated interest earned on the Net Reserve Funds" invested during that [five-year] period would total $149,307.[161] That is hardly sufficient to satisfy the "future payments" requirement of § 524(g) that is intended to ensure that "all claimants, current and future, receive just and comparable compensation for their injuries."[162]

76. To put it in perspective, Reorganized Hopeman is projected to earn less from its proposed post-confirmation "investments" over the course of five years than the average settlement value of a single mesothelioma claim against Hopeman between 2019 and the petition

---

[159] *Id.* at 135, 138. The specific requirement referenced by the court is that the trust be funded "by the obligation of such debtor or debtors to make future payments, including dividends." 11 U.S.C. § 524(g)(2)(B)(i)(II).

[160] *See* Dkt. No. 690, Ex. C (Reorganized Hopeman Projections).

[161] Dkt. No. 853, Ex. I ("Revised Reorganized Hopeman Projections"). The Committee's financial consultant spent more than Reorganized Hopeman's total projected income in two months just to identify this passive investment for Reorganized Hopeman. *See* Dkt. No. 630, Ex. C, Task Categories 2 and 16; Dkt. No. 652, Task Categories 2 and 16

[162] *Flintkote,* 489 B.R. at 133.

date, as reported by Hopeman's expert.[163] The projected income from Reorganized Hopeman's "business investments" thus could not be remotely sufficient to provide the Trust with "future payments" to ensure that current Asbestos Claims and future Demands will be resolved and paid in substantially the same manner.

77. Further, the Revised Reorganized Hopeman Projections are premised on significant contingencies that may not be realized, which will have a material negative impact if they are not.[164] And even if passive investments somehow could be considered a "business" – which they cannot – the Restructuring Transaction documents reflect that this purported "business" ***will not exist after 2030***, such that after that date, Reorganized Hopeman will have no "ongoing business."[165]

C. The Plan Turns the Purpose and Intent of § 524(g) Upside Down.

1. Instead of Channeling Asbestos Claims Away from Reorganized Hopeman, the Plan Requires Claimants to Continue Suing Reorganized Hopeman.

78. The Plan's feigned compliance with the "ongoing business" requirement of § 524(g) is not its only fatal flaw. The fundamental purpose of a § 524(g) channeling injunction is to "channel[ ] all asbestos related claims and obligations away from the reorganized entity and target[

---

[163] *See* Ex. E, 11/5/24 Expert Report of Ross Mishkin, p. 8 (the "arithmetic average" of Hopeman's mesothelioma settlements between 2019 and June 2024 was $249,706).

[164] 6/27/25 Tully Tr., p. 117:7-18; . The projections for Reorganized Debtor's real estate investment are premised on (a) a substantial distribution in July 2028 following the anticipated "refinance" of the existing interest-only loan on the property at 5.75%+ interest that is projected to yield $6 million in cash out proceeds if all assumptions come to fruition, including the owner's ability to obtain a fixed-rate mortgage with a 5% interest rate (*see* Dkt. No. 853 at Doc. Page 204 of 239), and (b) the sale of the apartment complex in July 2030 that is projected to yield over $29 million in proceeds (*id.*, Doc. Page 218 of 239). If the anticipated refinancing does not occur in 2028, it would reduce the projections by $90,000 (6/27/25 Tully Tr., p. 136:7-9),

[165] *See* Dkt. No. 853, Ex. F., Doc. Page 204 of 239 (investment in the apartment complex is a "five year" opportunity); Doc. Page 218 of 239 (projecting sale of the apartment complex in July 2030).

] it towards the [ ] Trust[ ] for resolution," in order to "protect and preserve the [ ] operating entity. . . help ensure the Trust's ability to honor its commitments, and [ ] enhance the market value of the Trust's stock" in the reorganized corporation.[166] The Plan provides for exactly the opposite. Instead of channeling asbestos claims ***away*** from Reorganized Debtor and into ***a trust*** that "will value[ ] and. . . pay, present claims and future demands,"[167] the Plan requires holders of Insured Asbestos Claims to "initiate, commence, continue, or prosecute an action ***against Reorganized Hopeman***."[168]

79. Furthermore, the sole means for holders of Insured Asbestos Claims to obtain payment for their claims is by pursuing coverage from Non-Settling Asbestos Insurers. The Plan prohibits those claimants from seeking payment from "***any other asset***, including any other Asbestos Insurance Right, ***of the Asbestos Trust***. . . ."[169] This directly contravenes § 524(g) requirements that Channeled Asbestos Claims "be paid in whole or in part by a trust" and that Demands likewise "be paid by a trust."[170]

2. Instead of Requiring Reorganized Hopeman to Provide "Evergreen" Funding to the Trust, the Trust will Provide Ongoing Funding to Reorganized Hopeman.

80. Conclusively demonstrating that Reorganized Hopeman will not be the "goose that lays the golden egg" that provides an "evergreen" source of funding to the Trust to pay Asbestos

---

[166] *Johns-Manville.*, 68 B.R. at 624.

[167] 11 U.S.C. § 524(g)(1)(B); § 524(g)(2)(b)(ii)(V).

[168] Plan § 8.12 (emphasis added). *See also* 3/10/25 Tr., p. 8:15-18 (Debtor's counsel explaining that "with a reorganized debtor, plaintiffs could sue the debtor in the tort system. Direct action claimants can bring their claims against the debtor and against insurers. . .And so allow all those claims to be resolved there.")

[169] *Id*., § 8.12(c) (emphasis added).

[170] 11 U.S.C. §§ 524(g)(1)(B), 524(g)(5)(C).

Claims through "profits" generated by Reorganized Debtor's operations[171] (because there will be none), ***the Asbestos Trust has an ongoing obligation to contribute working capital to Reorganized Hopeman***."[172] The fact that the Trust Agreement was amended specifically to include that provision is *prima facie* evidence that Reorganized Hopeman will not be a "going concern" that generates sufficient income from its passive investment to be self-sustaining, much less to provide an "evergreen" source of funding to the Trust as § 524(g) requires. It also means that the Plan is not feasible and cannot be confirmed pursuant to § 1129(a)(11).[173]

3. Current Claims and Future Demands Will Not be Paid in Substantially the Same Manner because the Plan Creates the Quintessential Race to the Courthouse.

81. Because Reorganized Hopeman will not provide an "evergreen" source of funding to the Trust and, instead, the Trust will be the source of Reorganized Hopeman's ongoing funding, the Plan cannot satisfy the § 524(g) requirement that "the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner."[174] The Trust's liquid assets will be finite, consisting solely of the remainder of the $18.5 million in Certain Insurers' Settlement proceeds after subtracting the Net Reserve Funds – projected to be $13,100,000[175] – and the Trust's initial $150,000 tranche of "working capital" to Reorganized Hopeman. Those assets, which are the only source of payments for Uninsured Asbestos Claims, will be continually reduced by the Trust's ongoing obligation to fund

---

[171] *Johns-Manville*, 68 B.R. at 622.

[172] Dkt. No. 853, Amended Trust Agreement § 3.2(k).

[173] *See In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 482–483 (Bankr. D.S.C. 2010) (quoting *In re Walker*, 165 B.R. 994, 1004 (E.D. Va. 1994)) (courts should assess "'whether the things which are to be done after confirmation can be done as a practical matter under the facts.'").

[174] 11 U.S.C. § 524(g)(2)(B)(ii)(V).

[175] *See* Liquidation Analysis, Chapter 11 "Professional Fee Administrative Expense Claims," "Asbestos Trust Start-Up Costs," and "Ongoing Business Investment."

Reorganized Hopeman's "working capital." Combined with the Trust's own administrative expenses that are estimated to total $375,000 per year (*see* p. 24, above), this means that Trust funding available for distribution to Uninsured Asbestos Claimants will be diminished year over year by far more than claim payments. Thus, holders of Uninsured Asbestos Claims who file claims against the Trust sooner necessarily will receive greater recoveries than those who file claims later – such as holders of Demands that eventually become Claims – because this limited fund will be continuously reduced with no means to replenish it.

82. Holders of Insured Asbestos Claims face a similar issue. The means for resolving Insured Asbestos Claims under the Plan is no different than the way Hopeman resolved such claims pre-petition, *i.e.*, in the tort system. This is not a case where Debtor's insurance coverage is unlimited, such that holders of current Insured Asbestos Claims and holders of Demands that may become Insured Asbestos Claims receive equal treatment even where their claims are resolved in the tort system after confirmation.[176] The Non-Settling Asbestos Insurers' excess policies, including the Chubb Insurers' Policies, all have aggregate limits that are reduced by claim payments. Many of those policies are also reduced by the costs of defending claims. Thus, every Insured Asbestos Claim that is tendered to an excess Non-Settling Insurer for defense and payment reduces the amounts remaining for other claims. This precludes confirmation for two reasons.

83. **First**, it means that claimants in Louisiana holding "direct action" claims may proceed directly against Non-Settling Asbestos Insurer(s) and resolve their claims via judgment against such insurer(s) or settlement, while claimants against Reorganized Hopeman in ***every other***

[176] *See*, *e.g.*, *In re Kaiser Gypsum Co., Inc.*, 135 F.4th 185, 190 (4th Cir. 2025) (In a § 524(g) case where trust claims will be resolved in the tort system, "Truck's primary coverage applies on a per-claim basis without a maximum aggregate limit. This means that Truck's coverage is non-eroding, subject only to the $500,000 per claim limit.").

jurisdiction must undertake the two-step process of first liquidating their claims against Reorganized Hopeman and then, after obtaining a judgment against Reorganized Hopeman, seeking recovery for such judgment in a separate proceeding against Non-Settling Asbestos Insurers.[177] Claims liquidated first via direct actions also will be paid first, diminishing the applicable limits of insurance coverage available to pay other claims.

84. **Second**, and similarly, recoveries for Demand holders (*i.e.*, future claimants) are at risk because every dollar paid to resolve Insured Asbestos Claims that precede them diminishes the amounts remaining under the Chubb Insurers' (and other Non-Settling Asbestos Insurers') policies.

85. In both respects, the Plan creates the very "race to the courthouse" that Debtor and the Court sought to avoid in this case (*see* p. 18-19, above). As Debtor previously recognized, such a "'race to the courthouse' among Holders of Asbestos PI Claims [ ] eliminat[es] any likelihood of an equality of distribution among similarly-situated Holders of Asbestos PI Claims."[178] This violates the § 524(g) requirement that "the trust [ ] value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the

[177] *See, e.g., Erie Ins. Co. v. McKinley Chiropractic Ctr., P.C.*, 803 S.E.2d 741, 742 (Va. 2017) ("An injured party possesses no right to recover tort damages from the tortfeasor's insurer until reducing to a judgment his claim against the tortfeasor."); N.Y. Ins. Law § 3420(1) ("an action may be maintained. . . against the insurer upon any policy or contract of liability insurance. . . to recover the amount of a judgment against the insured [by] any person who. . . has obtained a judgment against the insured. . . for damages for injury sustained or loss or damage occasioned during the life of the policy or contract").

[178] Dkt. No. 57, Liquidation Plan, p. 26.

same manner."[179] The Plan thus cannot be confirmed because it does not satisfy the funding requirements of § 524(g).[180]

86. These Plan provisions turn § 524(g) upside down, precluding confirmation pursuant to § 1129(a)(1) and § 524(g).[181]

II. The Plan Does Not Satisfy § 1123 because it Does Not Provide the Same Treatment for Each Claim in Class 4.

87. The Plan classifies all Channeled Asbestos Claims as Class 4 creditors, yet it provides for disparate treatment of those claims. There can be no legitimate dispute that holders of Uninsured Asbestos Claims claiming against an ever-dwindling fund of Trust assets that will be minimal to begin with,[182] and receiving cents-on-the-dollar for their recoveries because they will be subject to a payment percentage because of the Trust's obligation to set aside amounts for future

---

[179] 11 U.S.C. § 524(g)(2)(B)(ii)(V).

[180] As Debtor explained to the Court, "[i]n many [§ 524(g)] cases, you would have an affiliate who would be contributing money to a 524(g) trust over time, sort of ***continuing to stay in business and supply some funds to allow the trust to have bigger recoveries***." 3/10/25 Tr., p. 6:25-7:3. Debtor further explained that "[w]e have several examples. . . where debtors were allowed or reorganized debtors were allowed to invest in, for example, commercial property. . . And that would ***contribute over time additional income to the trust***." *Id*., p. 7:4-9. That is not what will happen if this Plan is confirmed.

[181] The FCR agreed that the Plan and Disclosure Statement were ready for solicitation just six days after she was appointed, based solely on her review of those documents and discussions with counsel. The FCR did not have the benefit of reviewing and analyzing Hopeman's insurance program, Hopeman's insurance policies, or its pre-petition coverage-in-place agreements. Given the significance of Hopeman's insurance to the recoveries available to current and future holders of Channeled Asbestos Claims, the FCR was put in the impossible position of deciding whether a Plan that was a *fait accompli,* on a train that was hurtling towards the station, was in future claimants' best interests. That is far afield from the *Johns-Manville* case upon which § 524(g) is modeled, where "the Legal Representative for Future Claimants has been active in the Manville reorganization for over two years. He has been the catalyst for, if not the architect of this Plan." *Johns-Manville*, 68 B.R. at 626. The FCR in this case cannot have sufficiently "protect[ed] the rights of persons that might subsequently assert demands" because, through no fault of her own, she was not afforded sufficient opportunity to be "part of the proceedings leading to issuance" of a § 524(g) injunction. 11 U.S.C. § 524(g)(4)(B)(i).

[182] *See* p. 24, above. According to Debtor, the proceeds of the Certain Insurers' settlement, "less whatever was allowed to be used [from] that. . . is not thought to be sufficient at the moment to just start bringing all the claims in house and running them through an administrative process." 3/10/25 Tr., p. 8:6-12.

claimants, will receive significantly less recoveries than holders of Insured Asbestos Claims who have the potential of recovering significantly more from Non-Settling Asbestos Insurers without being subject to the payment percentage. Nor can it seriously be disputed that recoveries for holders of Insured Asbestos Claims ***without*** direct action rights will be delayed, and likely substantially so, compared to holders of Insured Asbestos Claims with direct action rights who can sue insurers directly without first obtaining a judgment against Reorganized Hopeman. The disparate treatment of Class 4 creditors violates the § 1123(a)(4) requirement that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." The Plan is non-confirmable on that basis.

88. The Bankruptcy Court's decision in *In re City Homes III, LLC* is instructive.[183] The Chapter 11 plan at issue in that case, albeit a proposed Chapter 11 plan of liquidation, strongly parallels the proposed Plan (and the Unsecured Creditors Committee in the *City Homes* case was represented by the same counsel representing the Committee here). The *City Homes* debtors faced liability arising from their current and former tenants' alleged bodily injuries from lead paint exposures.[184] Insurance coverage for lead paint claims was "the foundation of the 'substantial assets' of the estate."[185] Like the Plan here, the *City Homes* plan classified all lead paint claimants "in one group that includes both Insurance Covered Claimants and Uninsured Claimants."[186] Mirroring the Plan in this case, the *City Homes* plan provided that:

- Insured Lead-Paint Claimants "shall be entitled to initiate, continue and/or prosecute their Lead–Paint Claims in the non–Bankruptcy Court tort system against the

[183] *In re City Homes III LLC*, 564 B.R. 827 (Bankr. D. Md. 2017).

[184] *Id*. at 830.

[185] *Id*.

[186] *Id*. at 861.

> Debtors and the Reorganized Debtors for the purpose of establishing the Debtor(s)' liability for such Lead Paint Claims. The rights of Lead–Paint Claimants to recover on or enforce such Claims shall be limited to the proceeds of Lead–Paint Insurance Policies applicable to their Lead–Paint Claim;"[187] and
>
> - "Upon the Effective Date, the Reorganized Debtors shall establish the Uninsured Lead–Paint Claim Fund for the payment of Lead–Paint Claims. . . . The Uninsured Lead–Paint Claim Fund shall be funded after the Effective Date. . . with the sum of Three Hundred Thousand Dollars ($300,000). . . the Reorganized Debtors shall pay each such Holder of an Allowed Uninsured Lead–Paint Claim such Claimant's equal pro rata share of the Uninsured Lead–Paint Claim Fund. . . ."[188]

89. The *City Homes* debtors asserted that lead paint claimants were properly classified together because the "the state law rights of the claimants are the same, regardless of whether there is available insurance or not."[189] The *City Homes* court disagreed, finding that "[t]he claims of the Uninsured Claimants are not 'substantially similar' to those of the Insurance Covered Claimants" and "the members of Class 5A-L are not treated equally by the Final Plan."[190] In particular, the court found that:

> As for whether the satisfaction process is equal, Insurance Covered Claimants will have the opportunity to have their claims paid at full value. . . through the resumption of state court litigation. Article 4.5 specifically limits the claims of claimants who opt for state court litigation to 'the proceeds of Lead–Paint Insurance Policies applicable to their Lead–Paint Claim'. Conversely, Uninsured Claimants are limited to a *pro rata* payment from the $300,000 fund. . . For the same reason, the Insurance Covered Claimants and the Uninsured Claimants do not receive 'equal value' under the Final Plan as it is proposed that they receive vastly different distribution or, 'payment percentage procedures'—insurance covered recovery by way of litigation *vs.* a *pro rata* share of $300,000. As for the last factor, an honest evaluation of the degree of consideration given up is irreparably marred by the lack of any knowledge regarding, (a) the identities of the Uninsured Claimants, (b) the nature and extent of their injuries, (c) a reasonable estimate of their damages and (d)

[187] *Id*.

[188] *Id*. at 862.

[189] *Id*. at 845.

[190] *Id*. at 868, 870.

> any potential liability of the Debtors or the Protected Parties. However, what is certain is that Insurance Covered Claimants are giving up relatively little—mainly the delay and any prejudice caused by this reorganization proceeding commenced at the behest of the Protected Parties—by comparison.[191]

Thus, the *City Homes* court held that, "[t]o properly respect the huge difference between the two classes of claimants—whether they might rely upon and recover insurance proceeds for their injuries or not—the Uninsured Claimants should have been separately classified," and that "[b]ecause they were not," the plan "violates §§ 1123(a)(4) and 1122(a) and therefore cannot be confirmed."[192]

90. For the same reasons, the Plan here violates § 1123(a)(4) and it cannot be confirmed.

a. Channeled Asbestos Claims are not "subject to the same process for claim satisfaction."[193] Uninsured Asbestos Claims are paid directly by the Trust; Insured Asbestos Claims with direct action rights can sue and recover directly from Non-Settling Asbestos Insurers; and Insured Asbestos Claims without direct action rights must engage in a two-step litigation process to obtain recovery from Non-Settling Asbestos Insurers.

---

[191] *Id*. at 868. The *City Homes* court adopted the §1123(a)(4) "equal treatment" test set forth in the *W.R. Grace* asbestos bankruptcy case, *In re W.R. Grace & Co*., 475 B.R. 34, 121 (D. Del. 2012), *aff'd*, 729 F.3d 311 (3d Cir. 2013), requiring that: "(1) all class members must be subject to the same process for claim satisfaction ... (2) all class member' claims must be of 'equal value' through the application of the same pro rata distribution or payment percentage procedures to all claims. . . and (3) all class members must give up the same degree of consideration for their distribution under the plan."

[192] *Id*. at 870.

[193] *W.R. Grace*, 475 B.R. 121.

b. The Channeled Asbestos Claims are not of "equal value" through application of "the same pro rata distribution or payment percentage procedures."[194] Uninsured Asbestos Claimants will be paid by the Trust and subject to the Payment Percentage; Insured Asbestos Claimants with direct action rights will recover directly from Non-Settling Insurers undiminished by the Litigation Trustee's 33.3% contingency fee; and Insured Asbestos Claimants without direct action rights will have their recoveries reduced by the Litigation Trustee's 33.3% contingency fee imposed for obtaining recovery from Non-Settling Asbestos Insurers on their respective behalf.

c. For the same reasons, Channeled Asbestos Claimants plainly are not "giv[ing] up the same degree of consideration for their distribution under the plan."[195]

Further, it is impossible for the Court to determine if "the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." The Master Ballots transmitted in this case did not distinguish among Uninsured Asbestos Claims or the two types of Insured Asbestos Claims, so there is no way to know (i) which Asbestos Claimants fall into each class, (ii) the alleged nature and value of their claims, or (iii) whether any holder of a particular Asbestos Claim agreed to a less favorable treatment of his or her claim. For all of these reasons, the Plan does not provide "equal treatment" for all Class 4 Channeled Asbestos Claimants as § 1123(a)(4) requires, and confirmation should be denied.[196]

---

[194] *Id*.

[195] *Id*.

[196] *Cf*. *In re Superior Siding & Window, Inc.*, 14 F.3d 240, 243 (4th Cir. 1994) ("[w]e believe that this policy of equality among creditors, fundamental to the bankruptcy law, is one of the factors to be considered in determining the 'best interest of the creditors' under § 1112(b), and it is not served by merely tallying the votes of the unsecured creditors and yielding to the majority interest.").

III. The Plan Does Not Comply with § 1129(a)(7) and Violates § 1129(a)(2) because the Liquidation Analysis is Premised on False Assumptions and Fails to Include Information Known to the Plan Proponents.

91. Section 1129(a)(7) provides that in order for a plan to be confirmable, the plan must provide holders of Claims and Interests with at least as much as they would have received in a Chapter 7 liquidation.[197] The "best interests" test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.[198] The Plan Proponents must demonstrate, "with respect to each impaired class of claims or interests," that "each holder of a claim or interest of such class – (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."[199]

92. The Plan Proponents cannot make any such showing here because the Liquidation Analysis is fundamentally flawed in several ways, precluding confirmation under § 1129(a)(7).

A. The Liquidation Analysis Relies on Incorrect Assumptions.

The Liquidation Analysis underlying the Plan Proponents' "best interests" analysis is misleading and wrong. It cannot support a determination that the Plan is in the best interest of holders of Claims to which that analysis applies.

93. **First**, the Liquidation Analysis is incorrectly premised on the assertion that the Plan "offers more value to holders of Asbestos Claims than would result from a liquidation" because it provides an "enduring framework" for holders of "Asbestos Claims ***and Demands***" to sue

---

[197] *In re A.H. Robins, Co., Inc*., 880 F.2d 694, 698 (4th Cir.1989).

[198] *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 442 n. 13 (1999).

[199] 11 U.S.C. § 1129(a)(7).

Reorganized Hopeman such that "more claimants" will be able to receive compensation from Non-Settling Asbestos Insurers.[200] That is not the correct inquiry under § 1129(a)(7).

94. By its plain terms, the "best interests" analysis mandated by § 1129(a)(7) concerns only the impact of the Plan on ***each*** holder of ***current*** Claims or Interests as compared to his or her recovery in a chapter 7 liquidation, not holders of Claims and Demands all together.[201] Current Asbestos Claims are the only "Claims" that will exist on the Effective Date and that are eligible to vote on the Plan. By definition, Demands as set forth in § 524(g) do not have current Claims[202] and they do not vote on the Plan – hence the § 524(g) requirement for a Future Claimants' Representative to represent the interests of absent Demand holders.[203] Section 524(g) contains no provision for the FCR to vote on the Plan.[204] Nor does it alter the analysis prescribed by § 1129(a)(7) for a Chapter 11 plan or prescribe that a § 1127(a)(7) analysis must account for Demands[205]. Thus, the "best interests" analysis most focus on each holder of a current Claim – whether an Asbestos Claim or a Class 3 General Unsecured Claim. Because the Liquidation Analysis contains no such analysis, the Plan Proponents cannot satisfy their burden under § 1129(a)(7).

---

[200] Disclosure Statement, Ex. B (emphasis added).

[201] As discussed above, grouping these claims together in a single class is improper because the proposed Plan does not provide them with substantially similar treatment.

[202] *See* 11 U.S.C. § 524(g)(5)(A) ("the term 'demand' means a demand for payment, present or future, ***that*** [ ] ***was not a claim*** during the proceedings leading to the confirmation of a plan of reorganization").

[203] *See* 11 U.S.C. § 524(g)(4)(B)(i) (524(g) injunction is "valid and enforceable with respect to a demand" if, "as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands.").

[204] Underscoring the distinction between holders of Claims and Demands, § 524(g) requires the "a separate class [ ] of the claimants whose ***claims*** are to be addressed by the trust" to be "established and vote[ ], by at least 75 percent of those voting, in favor of the plan." 11 U.S.C. § 524(g)(2)(B)(IV)(bb).

[205] Nor could it, given the required finding under § 524(g) that "the actual amounts, numbers, and timing of such future demands cannot be determined." 11 U.S.C. § 524(g)(2)(B)(ii)(II).

95. **Second**, the Liquidation Analysis is premised on the false construct that converting to chapter 7 "would result in a considerably longer process for resolving all of the Asbestos Claims and in substantially less funds being available to distribute to creditors." The Plan Proponents suggest that Asbestos Claims would be forced to (i) wait until all Asbestos Claims were resolved in the tort system before receiving distributions and (ii) bear the expenses of the Chapter 7 trustee's fees and professional fees incurred to liquidate Asbestos Claims in the tort system.

96. Neither is true for holders of Insured Asbestos Claims. The Liquidation Analysis contains no explanation as to how or why a chapter 7 trustee would incur professional fees to liquidate Asbestos Claims in the tort system, but the Reorganizing Debtor in the proposed Plan would not.[206] That assumption is unfounded. Whether in chapter 7 or through the Plan, those claims will be resolved in the tort system, tendered to insurers for defense and payment.

97. Tort claimants routinely obtain relief from the stay in Chapter 7 cases to liquidate their claims in non-bankruptcy fora and obtain payment solely from available insurance, with no cost to the estate or reductions on their recoveries for chapter 7 fees. And they do not have to wait until all other Asbestos Claims have been liquidated before obtaining payment from applicable insurance.[207] The *D/C Distribution* court's analysis underscores this flaw in the Plan Proponents' Liquidation Analysis. As the court explained:

---

[206] *See* Liquidation Analysis, Dkt. No. 690, Doc. Page 212 of 219, Doc. Page 216 of 219 ("chapter 7 trustee professional fees and expenses associated with resolution of claims would be significantly more time consuming, expensive and uncertain and would be incrementally higher than under the chapter 11 scenario").

[207] *See*, *e.g.*, *In re D/C Distribution, LLC*, 617 B.R. 600, 618 (Bankr. N.D. Ill. 2020) (lifting the stay in chapter 7 case so asbestos claimants could pursuing their lawsuits against debtor and "recover on any judgment or settlement from and to the extent of any available insurance coverage of [debtor]"); *In re Scott Wetzel Servs., Inc.*, 243 B.R. 802, 806 (Bankr. M.D. Fla. 1999) (granting creditor's stay relief motion so that it "may pursue an action against the Debtor as a nominal defendant for the purposes of recovering under the Liability Insurance Policies"); *In re Podmostka*, 527 B.R. 51, 55 (Bankr. D. Mass. 2015) ("relief

> If the stay were lifted to allow the Claimants to pursue the Debtor's insurers, at most the Debtor would have to be involved in determining which insurer, if any, should defend each claim. ***This is something the Debtor would have to do no matter where and when***[6] the Claimants pursue their claims. Taking into account such equitable considerations, '[t]he equities weigh heavily in favor of [the Claimants]' who should be allowed to 'establish liability in the tort system' so that they may recover any damages they have suffered against the Debtor's proper insurer.[208]

In short, the Plan Proponents' assertions regarding the time and expense for resolving Insured Asbestos Claims in chapter 7 as compared to this Plan are nothing more than *ipse dixit* that is disproven by the way tort claims regularly are handled in a Chapter 7 case.

B. The Plan Cannot be Confirmed Pursuant to § 1129(a)(2) because the Plan Proponents Failed to Include Adequate Information in the Liquidation Analysis and Disclosure Statement Regarding Asbestos Claimants' Anticipated Recoveries Under the Plan as Compared to a Chapter 7 Liquidation, in Violation of § 1125.

98. The Liquidation Analysis does not include "adequate information" that would enable holders of Asbestos Claims or this Court to determine that the Plan is in their best interests as required by § 1129(a)(7), or to make an informed judgment about the plan as required by § 1125, thereby precluding confirmation under §§ 1129(a)(1), 1129(a)(2), and 1129(a)(7).

1. The Liquidation Analysis Contains No Analysis Regarding Uninsured Asbestos Claims.

99. It is impossible to discern from the Liquidation Analysis how "each holder" of a pending Asbestos Claim, whether an Insured Asbestos Claim or an Uninsured Asbestos Claim, would fare under the Plan compared to a chapter 7 liquidation because the Liquidation Analysis

---

from stay to pursue a judgment against the Debtor is warranted as a prerequisite to a recovery against the [insurance] Carrier").

[208] *D/C Distribution*, 617 B.R. at 614.

contains no information that would allow the Court or any holder of a Claim to make that determination. Final approval of the Disclosure Statement should be denied on that basis alone.[209]

100. Under the Plan, Channeled Asbestos Claims include Uninsured Asbestos Claims and Insured Asbestos Claims. The Liquidation Analysis does not distinguish between them or address the potential recoveries for each type of claim (or even for Asbestos Claims overall). Instead, it states that "under the chapter 11 scenario. . . holders of Asbestos Claims and demands may bring actions against Reorganized Hopeman and, to the extent they have obtained a judgment against Reorganized Hopeman or have the right to pursue direct actions under applicable nonbankruptcy law, such holders may bring judgment-enforcement or direct action against Non-Settling Asbestos Insurers. . . ."[210] **That is not true for holders of Uninsured Asbestos Claims**, whose claims will be filed against the Trust and whose recoveries (if any) will be obtained from the Trust.

101. The Liquidation Analysis is silent as to how Uninsured Asbestos Claims fare under the Plan compared to the chapter 7 scenario. Nor does it contain any information regarding the value of pending Asbestos Claims, including an estimate distinguishing Uninsured Asbestos Claims and Insured Asbestos Claims, that would allow the Court or any holder of a Claim to determine that "the return to each creditor under the [ ] Plan. . . [is] 'not less than' the return under Chapter 7."[211] That is undoubtedly because current holders of Uninsured Asbestos Claims are ***worse off*** under the Plan, since proceeds of the Certain Insurers' settlement that otherwise would

---

[209] *See In re Radco Props., Inc.*, 402 B.R. 666, 683 (Bankr. E.D.N.C. 2009) (A disclosure statement should provide the average unsecured creditor "what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.").

[210] Liquidation Analysis, n. 12.

[211] *In re Travelstead*, 227 B.R. 638, 654 (D. Md. 1998).

be available to pay their claims in a chapter 7 will be siphoned off for Trust "Asbestos Trust Start-Up Costs," Reorganized Hopeman's "Ongoing Business Investment," and to fund Reorganized Hopeman's "working capital," among other things.

2. The Disclosure Statement and Liquidation Analysis Contain No Discussion of the Litigation Trustee's Contingency Fee and the Impact on Insured Asbestos Claimants' Recoveries.

102. Further, the Disclosure Statement does not disclose that non-direct action Insured Asbestos Claimants' recoveries will be significantly diminished by the Litigation Trustee's 33.3% contingency fee. Notably, the Liquidation Analysis does not include the impact of that hefty contingency fee on Insured Asbestos Claimants' recoveries. According to Mr. Tully of FTI, who prepared the Liquidation Analysis, the Litigation Trustee's contingency fee was not included in the Liquidation Analysis because (a) the Liquidation Analysis "was put together before this concept was available to me," (b) when the Litigation Trustee concept "came afterwards. . . We decided it made absolutely no sense to change it," and (c) "[w]e still don't think that assumption's germane to this analysis."[212]

103. That is preposterous. Mr. Tully is the Committee's financial consultant. He simply needed to ask the Committee "what the litigation trustee might do" and how it would impact Channeled Asbestos Claimants' recoveries under the Plan. Had Mr. Tully done so, he would have learned the impact of the Litigation Trustee's contingency fee on claimants' recoveries, just as the Committee's designee explained in his deposition just days ago:

> Q. ***So any amounts recovered in litigation for a channeled asbestos claim, the litigation trustee gets a third of that; is that right***?

[212] 6/27/25 Tully Tr., p. 209:6-210:20.

> A. Well, no, in the sense of he has to pay -- and that's in the next sentence -- to the extent that he retains counsel to – to prosecute those claims, that -- that counsel has to be paid out of that 33 percent.
>
> Q. Right. But ***he would get the 33 percent and then from that amount pay whatever other counsel he retains.*** That's how – ***that's what the document says, right***?
>
> A. ***That's my understanding of it***."[213]

104. Indeed, the Plan and Disclosure Statement included in the Solicitation Packages contain no information whatsoever regarding the Litigation Trustee and his compensation, or even that the Trust would have a Litigation Trustee. The Litigation Trustee and his 33.3% contingency fee were first disclosed in the Amended Trust Agreement filed as part of the Plan Supplement on June 6, 2025, weeks after the Solicitation Packages were transmitted. The Plan Supplement was not provided to all of the creditors that received Solicitation Packages; rather, it was served only on the Rule 2002 service list.[214] This alone precludes confirmation of the Plan. Creditors holding Insured Asbestos Claims plainly did not have "adequate information" to make an informed decision on the Plan with respect to the treatment of their claims, given that the Amended Trust Agreement filed with the Plan Supplement materially changed – and reduced – the recoveries they may receive under the Plan by a ***third***, but this was not disclosed or discussed in the Disclosure Statement.[215]

---

[213] 7/3/25 Branham Tr., p. 90:19-91:8 (emphasis added).

[214] *Compare* Dkt. No. 859, Certificate of Service for Notice of Filing of Plan Supplement (Dkt. No. 853) *with* Dkt. No. 864, Certificate of Service for Solicitation Packages.

[215] *See In re Am.-CV Station Grp., Inc.*, 56 F.4th 1302, 1308–09 (11th Cir. 2023) (reversing bankruptcy court's confirmation of plan that was modified after solicitation to "materially and adversely" affect equity holders' treatment under the plan, because the "modification must comply with § 1125's requirement that claim and interest holders be given 'adequate information' about the contents of a plan, and "[b]efore a modification is filed, this is accomplished in a disclosure statement, which must be approved by the bankruptcy court as containing adequate information" and the plan proponents did not comply with that requirement), citing §§ 1125, 1127, Fed. R. Bankr. P. 3016(b); *In re A.H. Robins Co., Inc.*, 216 B.R. 175,

3. The Disclosure Statement and Liquidation Analysis Fail to Disclose Projections Prepared by Debtor's and the Committee's Experts in this Case Reflecting that Current Creditors are Likely to Recover in Full in a Chapter 7 Scenario.

105. The Liquidation Analysis and Disclosure Statement are also flawed because they do not disclose the claim projections prepared by Debtor's and the Committee's respective experts in this bankruptcy case reflecting that holders of Asbestos Claims would receive payment in full or nearly in full under a chapter 7 scenario. In connection with its previously proposed Plan of Liquidation, Hopeman asserted that the proceeds of the Chubb Insurers' Settlement Agreement and the Certain Insurers' Settlement Agreement, totaling $50 million, "would be sufficient to pay the expected allowed claims if the bar date was even 3 years or longer after the Effective Date."[216] That is consistent with expert opinions previously produced in this bankruptcy case on behalf of Debtor and the Committee.

106. According to Debtor's expert, the estimated aggregate value of compensable Asbestos Claims pending as of the Petition Date is [redacted] and the estimated value of Asbestos Claims pending on the Petition Date plus those expected to accrue through the assumed January 1, 2025 effective date of the then-proposed Plan of Liquidation is [redacted][217] Based on the Liquidation Analysis, this means that in the Chapter 7 scenario, the Chubb Insurers'

180 (E.D. Va. 1997), *aff'd sub nom. In re A. H. Robins Co., Inc.,* 163 F.3d 598 (4th Cir. 1998) ("[a] § 1125 disclosure statement accompanying a plan of reorganization is designed to provide information to creditors to permit them to determine whether to vote for or against the plan. Creditors form their ideas about what they will receive out of the debtor's estate from that disclosure statement.")

[216] *Id. See also* 3/10/25 Tr., p. 12:25-13:2 (Debtor's counsel explaining that "we thought that the deals we cut pre-petition would cover, if not in full, close to in full the claims that had been incurred that were claimants in this case").

[217] Ex. E, p. 11.

Settlement proceeds alone are sufficient to pay all current holders of compensable Asbestos Claims – whether Insured Asbestos Claims or Uninsured Asbestos Claims – ***in full***.[218]

107. The Committee's expert analyzed "current" claims that were open as of the petition date and those expected to be filed through June 2026 (*i.e.*, two years after the petition date), assuming, contrary to Hopeman's historical claim experience,[219] that ***every*** such claim would be paid. The Committee's expert opined that [redacted] Given that the Committee's expert included an additional two years' worth of claims that were not actually pending on the petition date, the value of current Claims for purposes of the Liquidation Analysis necessarily would be less. Thus, whether viewed from the lens of the Debtor's expert or the Committee's expert, these projections show that the $50 million in proceeds from the Chubb Insurers' Settlement Agreement and the Certain Insurers' Settlement would have been sufficient to pay current holders of Asbestos Claims in full or nearly in full in a chapter 7 scenario.

108. In contrast, those creditors will receive substantially reduced recoveries under the Plan because (a) amounts available for distribution to Uninsured Asbestos Claimants will be substantially diminished by Plan- and Trust-related expenditures, (b) holders of Insured Asbestos Claims without direct action rights will have their recoveries reduced by 1/3 to pay the Litigation Trustee, and (c) amounts available to pay Insured Asbestos Claims from Non-Settling Asbestos

[218] Liquidation Analysis, n.6.

[219] As of the petition date, [redacted]

[220] Ex. F, p. 6-8.

Insurers will be subject to the terms and conditions of those policies and pre-petition CIP Agreements.[221]

109. Neither Debtor's nor the Committee's experts' analyses were disclosed in the Liquidation Analysis regarding the Plan. Instead, the Liquidation Analysis states that "[b]ecause of the unliquidated nature of the vast majority of the Asbestos Claims, the aggregate amount of such claims is unknown and Hopeman does not have sufficient information to estimate the total amount of these claims with certainty for purposes of this analysis."[222] That assertion cannot be squared with Debtor's and the Committee's respective expert reports – ***prepared at the estate's expense*** – both of which did precisely what the Liquidation Analysis says could not be done.

110. When questioned regarding this contradiction, the Committee attested that "it is not necessary for the Liquidation Analysis to rely on prior estimates of Hopeman's liabilities."[223] Debtor similarly attested that "there is no requirement that the Liquidation Analysis rely on prior estimates of asbestos-related liabilities of the Debtor or any other party developed for litigation."[224] Debtor's and the Committee's positions make no sense. These estimates were generated by their own experts just months earlier in this bankruptcy case. The nature and value of Asbestos Claims do not change whether in chapter 11 or chapter 7. The Plan Proponents' failure to disclose

---

[221] The "Other Asbestos Insurance" estimate set forth in the Liquidation Analysis Chapter 11 scenario is premised on Hopeman's 2023 settlement presentation under the Chubb Insurers' policies (the "2023 Settlement Presentation"). The 2023 Settlement Presentation (which reflects spending/impairment through 2022) applies Hopeman's and the Chubb Insurers' pre-petition agreements regarding the scope and application of coverage under the Chubb Insurers' policies, including any defense reimbursement obligations and a pro rata allocation. Each claimant's recovery thus would be subject to those agreements, such that no claimant would recover the full liquidated value of their claim exclusively from the Chubb Insurers' policies.

[222] Disclosure Statement, Ex. B, n. 14.

[223] Ex. B, Committee Response to Interrogatory No. 13.

[224] Ex. D, Debtor's Response to Interrogatory No. 13,

information in their possession, and the assertion that the amount and value of pending Asbestos Claims is unknown and cannot be estimated, is misleading. The Plan cannot be confirmed because the Disclosure Statement and Liquidation Analysis do not contain "adequate information" as required by § 1125,[225] and because the Plan Proponents' own expert opinions demonstrate that the Plan is not in current Claimants' best interests as required by § 1129(a)(7).

C. The Plan is Not in the "Best Interests" of Asbestos Creditors.

111. A liquidation analysis that estimates the value of current claims against Hopeman and more accurately reflects the terms and operation of the Plan, including the Litigation Trustee's contingency fee, as well as the terms of the Chubb Insurers' policies, reflects that holders of Asbestos Claims would receive greater recoveries in a chapter 7 then they would under the Plan.

112. As reflected in the Expert Report of Marc C. Scarcella, attached as Exhibit I hereto, [redacted] Because holders of current Claims will not receive as much under the Plan as they would in a chapter 7 as of the Effective Date, the Plan fails the "best interests" test and cannot be confirmed pursuant to § 1129(a)(7).[226]

IV. The Plan Improperly Seeks to Alter the Chubb Insurers' Rights.

113. Debtor insists that "[the] proposed Plan will not alter any rights or defenses of any liability insurers of Hopeman who are 'Non-Settling Asbestos Insurers.'"[227] The Plan's structure

[225] In *Johns-Manville*, debtor presented evidence that "established a floor of at least 50,000 in number of present claimants" and "a $26,000 per claim disposition value estimate [that was] amply supported by the empirical data relied upon." *Johns-Manville*, 68 B.R. at 631.

[226] *A.H. Robins*, 880 F.2d at 698.

[227] Dkt. No. 759, Debtor's Omnibus Reply in Supp. of Solicitation Procedures Mot., ¶ 4.

and operation proves otherwise. Under § 1129, the Court may confirm a plan only if it "complies with the applicable provisions of [title 11]" and "has been proposed in good faith and not by any means forbidden by law."[228] It is a bedrock principle of bankruptcy law that a debtor is not entitled to rewrite prepetition contracts merely because of its status as a debtor in bankruptcy. Absent express statutory authority providing otherwise, the debtor may not use the chapter 11 process to renegotiate its bargained-for contractual rights and obligations. Even with the purported insurance neutrality language in the Plan, the Plan harms the Chubb Insurers' interests and prejudices the Chubb Insurers.

A. The Plan's "Insurance Neutrality" Language Does Not Adequately Protect the Insurers' Rights.

114. The mere presence of insurance neutrality language in a plan does not make it insurance neutral; rather, the test is whether operation of the plan would abrogate or interfere with insurers' rights or create additional liabilities.[229] While the Plan allegedly is "insurance neutral," its structure and intended operation prove otherwise. The "Insurance Neutrality" provision does not remedy the problems posed by the Plan – in fact, it perpetuates them. The "Insurance Neutrality" purports only to protect "the right of any insurer to assert any coverage defense."[230] It

---

[228] 11 U.S.C. § 1129(a)(1), (3). Section 1129(a)(3) incorporates state law. *See In re Am. Capital Equip., Inc.,* 405 B.R. 415, 423 (Bankr. W.D. Pa. 2009) *aff'd sub nom. Skinner Engine Co. v. Allianz Glob. Risk U.S. Ins. Co.,* No. BKY 01-23987, 2010 U.S. Dist. LEXIS 45667 (W.D. Pa. Mar. 29, 2010) *aff'd sub nom. In re Am. Capital Equip., LLC,* 688 F.3d 145 (3d Cir. 2012) (holding a bankruptcy plan could not be confirmed because it was forbidden under Pennsylvania law).

[229] *See GIT,* 645 F.3d at 213-14 (finding plan's creation of a trust "led to a manifold increase in . . . claims," which "constitutes a tangible disadvantage" sufficient to confer standing on the objecting insurers); *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.),* 677 F.3d 869, 887 (9th Cir. 2012) (finding plan was not insurance neutral because it "allow[ed] direct actions against [non-settling insurers]," "allow[ed] the trust to pay out claims according to the trust distribution plan and then [] seek indemnification from [non-settling insurers]," "terminate[d] [non-settling insurers]' ability to collect claims from settling insurers," and "affect[ed] the nature of [non-settling insurers]' contracts with [the future claimants' representative]").

[230] Plan § 8.18.

does not otherwise protect the Chubb Insurers' rights under their policies and pre-petition agreements or provide that the Chubb Insurers' policies and pre-petition agreements are not modified, amended, or supplemented by the Plan or Plan Documents and the Confirmation Order. At a minimum, the "Insurance Neutrality" provision must be amended to include those protections.

115. The "Insurance Neutrality" language contains carveouts that threaten to swallow protections that provision otherwise may provide. It provides that (a) "the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust . . . shall not affect the liability of any insurer," and (b) "the discharge and release of Hopeman and Reorganized Hopeman from all Claims. . . shall not affect the liability of any insurer." The Plan Proponents thus would have this Court make a declaration as to the impact, discharge, release, and injunctions set forth in the Plan on the Chubb Insurers' liabilities and coverage obligations. That is completely improper without affording the Chubb Insurers' due process with respect to the proposed adjudication and without complying with Bankruptcy Rule 7001(9), which requires that requests for declaratory relief be made in an adversary proceeding. (*See* ¶¶ 131-133, below).

116. But even if those basic protections were added to the Insurance Neutrality provision, as they should be, there are other Plan provisions that interfere with, or simply strip the Chubb Insurers of, their contractual rights, and which impermissibly increase the Chubb Insurers' exposures far beyond what they contracted for. "A plan is not insurance neutral when it may have a substantial economic impact on insurers," such as when "the actual amount of payments due from insurance companies is increased by the plan from what those liabilities would be absent the plan."[231] That is exactly the case here, regardless of the Plan's "Insurance Neutrality" provision.

[231] *Thorpe Insulation*, 677 F.3d at 886.

B. The Plan Imposes Obligations on the Chubb Insurers Beyond What They Contractually Agreed and Improperly Purports to Alter the Chubb Insurers' Policies and CIP Asbestos Agreements.

117. Although none of the Chubb Insurers have a duty to defend under their policies, the Plan provides that holders of Insured Asbestos Claims – a category into which claimants will self-select – must pursue lawsuits against Reorganized Hopeman in the tort system to obtain recoveries, and that such lawsuits will be tendered to ***all*** Non-Settling Asbestos Insurers for defense and any payment.[232] The Chubb Insurers and other similarly-situated insurers thus are faced with a Hobson's choice of incurring the expense and resources to defend against Insured Asbestos Claims despite expressly contracting with Hopeman ***not*** to have such an obligation, or risking default judgments that will significantly increase the amounts that Non-Settling Asbestos Insurers will be asked to pay because Reorganized Debtor will not "answer, appear, or otherwise participate in the action" in which it is sued.[233] Either way, the Chubb Insurers face increased liabilities that they would not have under their contracts and outside of this Plan.

118. Further, while Hopeman paid 35.12% of claim payments and 57.33% of defense costs for Asbestos Claims in 2023 (*i.e.*, pre-petition), "neither the debtor nor the reorganized debtor or the trust will be spending that money" that Hopeman was responsible for pre-petition, and reorganized debtor and the Trust "won't be defending claims with dollars," because "A, they don't have it, and B, that's not the path that they want to . . . go down."[234] Plan-related discovery makes clear that Debtor's previous assertions that the insurers' policies and CIP Agreements will not be affected by the Plan are untrue or, at best, subject to dispute post-confirmation.

---

[232] Trust Distribution Procedures ("TDP"), § 5.2(a)(ii).

[233] *Id*.

[234] 3/10/25 Tr., p. 13:17-22, 14:3-6.

119. Debtor and the Committee both contend that "all of the parties' respective rights, duties, defense, and obligations under the Chubb Insurers CIP Agreements are being preserved and, to the extent those agreements constitute executory contracts, are being assumed by the Reorganized Debtor."[235] But at the same time, Debtor refused to take a position as to whether holders of Channeled Asbestos Claims would be bound by the Chubb Insurers' 2009 Settlement Agreement or the Wellington Agreement, and the Committee takes the position that holders of Channeled Asbestos Claims "are not bound by" the Wellington Agreement or the 2009 Settlement Agreement.[236] Further, the Plan includes policies that were fully released by Hopeman in the 2009 Settlement Agreement as Asbestos Insurance Policies that will be included among the Asbestos Insurance Rights transferred to the Trust and expected to respond to Channeled Asbestos Claims.

120. The Plan cannot transfer rights under the Chubb Insurers' policies and CIP Agreements to the Trust without also transferring the obligations and burdens under those contracts. The Plan Proponents purport to split rights and obligations under the contracts, with the Trust receiving the rights while the Reorganized Debtor maintains some – but not all—of the obligations thereunder.[237] Further, the Plan Proponents purport to transfer rights in policies that Hopeman did not have on the petition date, because it released them.

121. It is a bedrock principle of bankruptcy law that a debtor's rights neither expand nor contract by "happenstance" of bankruptcy.[238] The Debtor "cannot possess anything more than the

---

[235] Ex.D, Debtor's Response to Chubb Insurers' Interrogatory No. 6; Ex. D, Committee's Response to Chubb Insurers' Interrogatory No. 6.

[236] *Id*., Debtor's Response to Chubb Insurers' Interrogatory Nos. 4-5; Committee's Responses to Chubb Insurers' Interrogatory Nos. 4-5.

[237] *See* Plan §§ 1.7, 1.13, and 8.3(b).

[238] *See Mission Prod. Holdings v. Technology, LLC*, 587 U.S. 370, 381 (2019).

debtor itself did outside bankruptcy."[239] That basic rule applies equally to insurance policies. "[T]he rights and obligations of the Debtor and [its insurer] under the [insurance] policy are not altered because of the Debtor's Chapter 11 filing."[240] "The filing of a bankruptcy petition does not alter the scope or terms of a debtor's insurance policy,"[241] nor does it permit an insured to "obtain greater rights to the proceeds of [an insurance] policy."[242]

122. The Plan Proponents are asking this Court to confirm a Plan that would do exactly that. Consistent with Debtor's repeated assertions that the Chubb Insurers' contractual rights would not be affected by the Plan, the Chubb Insurers requested that Debtor "amend Section 8.13 of the Plan and Section 5.2 of the TDP to clearly state that, in any action by the Trust or a Channeled Asbestos Claimant against a Non-Settling Asbestos Insurer, such action and any recovery from such Non-Settling Asbestos Insurer shall be subject to the terms, conditions, agreements, and limitations set forth in any Asbestos CIP Agreement to which that Non-Settling Asbestos Insurer is a party, including but not limited to the Wellington Agreement."[243] Debtor refused to include the language that the Chubb Insurers requested, asserting that it "cannot. . . and never will take a position in this case or in the plan about what the claimants' rights are under applicable non-bankruptcy law."[244]

123. But that is exactly why Chapter 11 exists, and that is exactly what § 524(g) does, in many respects. As the Court explained in *A.H. Robins*, "[t]he essential purpose of a bankruptcy

---

[239] *Id.*

[240] *In re Amatex Corp.,* 107 B.R. 856, 865-866 (E.D. Pa. 1989), *aff'd*, 908 F.2d 961 (3d Cir. 1990).

[241] *In re MF Glob. Holdings Ltd*., 469 B.R. 177, 193 (Bankr. S.D.N.Y. 2012).

[242] *In re Denario*, 267 B.R. 496, 499 (Bankr. N.D.N.Y. 2001).

[243] Ex. G.

[244] *Id*.

is the ratable distribution of assets among the bankrupt's creditors in a fair and equal manner, ***regardless of otherwise applicable state law***."[245] Further, applicable state law makes clear that claimants seeking recoveries from a tortfeasor's insurers after obtaining a judgment against the tortfeasor (*i.e.*, the holders of Insured Asbestos Claims without direct action rights) stand in the shoes of the tortfeasor vis-à-vis its insurer(s) and "can have no greater rights than the insured."[246] The Plan Proponents' positions with respect to claimants' rights notwithstanding the Wellington Agreement and the 2009 Settlement Agreement violate that well-established principle.

124. A bankruptcy court cannot confirm a plan that "excise[s]" provisions of an insurance policy or an agreement setting forth how such policies are applied "because doing so would rewrite the [insurance] [p]olicies and expand the Debtors' rights under them," and "the Court cannot modify those rights pursuant to the Bankruptcy Code."[247] This derives from the

---

[245] *A.H. Robins*, 216 B.R. at 185 (emphasis added). As the Court explained, "In a reorganization under Chapter 11 of the Bankruptcy Code, a debtor's creditors often contract away in the reorganization plan rights that their state law would otherwise have given them, in order to secure payments from the reorganized debtor that equal or exceed the amounts those creditors would otherwise receive if a debtor were forced to liquidate to pay their claims." *Id*. at 179. *See also In re RailWorks Corp.*, 621 B.R. 635, 641 (Bankr. D. Md. 2020) ("the confirmed plan acts in many ways as a new contract between the reorganized debtor and its creditors. The confirmed plan further details the treatment of creditors and interest holders and implements safeguards for both the reorganized debtor and its creditors").

[246] *D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 564 N.E.2d 634, 637 (N.Y. 1990). *See also Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 226 (4th Cir. 1999) ("A claimant seeking to bring a direct action against an insurer in Virginia stands in the shoes of the insured against whom his claim arose. Consequently, if the insured has breached the insurance policy, the insurer may assert this breach as a bar to the third-party claimant's recovery"); *CX Reinsurance Co. v. Levitas*, 207 F. Supp. 3d 566, 571 (D. Md. 2016), *aff'd sub nom. CX Reinsurance Co. Ltd. v. Loyal*, 691 F. App'x 130 (4th Cir. 2017) ("As the third party beneficiary of the insurance contract, the claimant stands in the shoes of the insured wrongdoer and vis-à-vis the insurer his rights are no greater than those of the insured's").

[247] *MF Glob. Holdings*, 469 B.R. at 193; *see Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 769 F. Supp. 671, 707 (D. Del. 1991) ("Courts do not rewrite contracts to include terms not assented to by the parties."), *aff'd* 988 F.2d 414 (3d Cir. 1992); *In re Exide Holdings, Inc.*, No. 20-11157, 2021 WL 3145612, at *6 (D. Del. July 26, 2021); *In re 641 Assocs., Ltd.*, 1993 WL 332646, at *8 (E.D. Pa. Aug. 26, 1993) ("There is no provision in the Bankruptcy Code allowing a bankruptcy court to disregard state-law contract rights."); *In re Cajun Elec. Power Co-op, Inc.*, 230 B.R. 715, 737 (Bankr. M.D. La. 1999) (plan was unconfirmable where it sought "improper modification" of supply contracts).

common sense principle that a debtor should not be able to misuse its bankruptcy proceeding to rewrite prepetition contracts to the detriment of its non-debtor counterparties, while seeking to claim the benefits of the contract without any of its performance obligations.[248] Thus, to the extent the Plan seeks to transfer rights under the Chubb Insurers' Policies and pre-petition CIP Agreements to the Trust, the policies and pre-petition agreements must be transferred in toto, with the Trust and its beneficiaries bound by all of the provisions therein.[249]

125. The Bankruptcy Code thus requires that the assignment of any contract be made "*cum onere*," such that rights and obligations thereunder are assigned together.[250] The *cum onere* principle applies equally to the transfer of rights and obligations under a non-executory contract pursuant to § 363 of the Bankruptcy Code as to the assumption and assignment of contracts and

---

[248] *See, e.g.*, *In re SPM Mfg. Corp.*, 984 F.2d 1305, 1311 (1st Cir. 1993) (bankruptcy courts lack authority to enter orders that "expand the contractual obligations of parties"); *In re Crippin*, 877 F.2d 594, 598 (7th Cir. 1989) ("[B]ankruptcy courts do not have the power to rewrite contracts to allow debtors to continue to perform on more favorable terms."); *Moody v. Amoco Oil Co*., 734 F.2d 1200, 1213 (7th Cir. 1984).

[249] Under the Wellington Agreement and the Chubb Insurers' pre-petition agreements with Hopeman, the Chubb Insurers agreed not to pursue contribution claims against other Hopeman insurers. To the extent the Trust and Channeled Asbestos Claimants are not bound by the terms of those agreements, the Chubb Insurers object to the Plan because it improperly purports to enjoin and largely extinguish the Chubb Insurers' contribution claims without compensation. *See, e.g., Hartford Acc. & Indem. Co. v. Mich. Mut. Ins. Co.*, 61 N.Y.2d 569, 573-74 (1984) (excess carrier may bring breach of good faith claims against primary insurers for failing to mount a competent defense); *Danaher Corp. v. Travelers Indem. Co.*, 414 F. Supp.3d 436, 452 (S.D.N.Y. 2019) (contribution action permitted when an insurer pays "more than its fair share for a loss covered by multiple insurers"). At a minimum, Non-Settling Asbestos Insurers' contribution claims against other insurers for other insurers' shares of defense and indemnity payments, including the shares that Hopeman paid pre-petition, must be channeled to the Trust and provision must be made for such claims. To the extent the Plan has the effect of extinguishing the Chubb Insurers' contribution claims against other insurers, the provisions of the Plan and improper and the Plan cannot be confirmed.

[250] *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV,* 209 F.3d 252, 264 (3d Cir. 2000) ("Bankruptcy law generally does not permit a debtor or an estate to assume the benefits of a contract and reject the unfavorable aspects of the same contract. Yet, allowing the Debtors to recharacterize their contract rights as accounts receivable and sell them free and clear of the corresponding obligations yields that very result.").

leases pursuant to § 365."[251] Because the Plan proposes to transfer only the rights under the Chubb Insurers' Policies and 2009 Settlement Agreement, but severs obligations thereunder – including Hopeman's and Century's express agreement that the Wellington Agreement would continue – the Plan violates § 363, § 1129(a)(1), and § 1129(a)(3) and it cannot be confirmed.

C. The Plan and Plan Documents Impair the Chubb Insurers' Rights to Information Regarding Claims They will be Asked to Defend and Threaten to Effectuate an Irreversible Waiver of Hopeman's Attorney-Client Privilege and Work Product Protections.

126. The Plan nominally provides that Reorganized Hopeman and the Trust will comply with Hopeman's duty of cooperation under the Chubb Insurers' Policies. Among those cooperation requirements is providing documents and information regarding pending claims and claims that will be tendered to the Chubb Insurers in the future. Debtor proposes to transfer all of its files regarding Asbestos Claims that were pending on the petition date to Reorganized Hopeman, which will be wholly owned by the Trust and managed by the same individual serving as the Trust's Litigation Trustee. The Trust will be overseen by the TAC and FCR, whose constituencies are directly adverse to Hopeman and the Non-Settling Asbestos Insurers who will be defending claims allegedly arising from Hopeman's liabilities.

127. As drafted, the Trust Agreement and Trust Distribution Procedures impose impediments to honoring Hopeman's duty of cooperation. Specifically, they expressly condition the Trust's ability to "disclose information, documents, or other materials reasonably necessary. . . to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Rights" on first obtaining the TAC and FCR's approval of such

[251] *In re Am. Home Mortg. Holdings, Inc.,* 402 B.R. 87, 98 (Bankr. D. Del. 2009).

disclosure.[252] Not only is this provision unlawful because it imposes conditions and restrictions on Hopeman's cooperation obligations that do not exist under the Chubb Insurers' Policies, but the requirement that the Trustee disclose Hopeman potentially privileged- and/or work product-protected documents pertaining to Asbestos Claims and Hopeman's defense ***to attorneys who are suing Hopeman*** threatens to effectuate an irreversible waiver of Hopeman's privileges. Such a waiver would increase Hopeman's – and, in turn, its insurers – potential liabilities for Asbestos Claims. There is no legitimate need for the TAC and FCR to review claim-related documents that Non-Settling Asbestos Insurers such as the Chubb Insurers require in connection with Hopeman's duty of cooperation in defending against and resolving Insured Asbestos Claims.

128. The Plan Proponents attempted to draft around this significant issue by including a provision in the Plan stating that the Trust's access to such books and records "shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records," as well as provisions in the TDP stating that allowing the TAC and FCR to access information available to the Asbestos Trust "shall not constitute a waiver of any applicable privilege."[253] That is not how privilege works. It is not for the party holding and waiving a privilege to simply declare that the waiver was not a waiver. That determination undoubtedly will be made by another court in a tort system action (in which Reorganized Hopeman and the Trust will not answer, appear, or defend, per § 8.12 of the Plan). Moreover, even if attorneys who are not on the TAC do not learn of the waiver, or the attorneys comprising the TAC agree not to argue in a tort system action that there was a waiver, that bell cannot be un-rung. The TAC attorneys reviewing the documents and deciding to consent to providing them to the Chubb Insurers or other Non-Settling Insurers cannot

[252] Dkt. No. 853, TDP § 6.5.

[253] Plan §8.3(l), TDP §§ 5.5, 6.4.

unsee what they have seen or unlearn what they have learned from them. This provision impairs Hopeman's and its Non-Settling Insurers' rights and it should not be approved.

D. The Plan Treats the Chubb Insurers as Non-Settling Insurers and Does Not Adequately Provide for the Chubb Insurers' Rejection Damages.

129. The Plan improperly treats the Chubb Insurers as "Non-Settling Insurers," notwithstanding that the Chubb Insurers entered into a settlement agreement and full policy buyback with Hopeman as part of this bankruptcy case, Debtor filed a motion to approve the Chubb Insurers' Settlement pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 363 after petition date[254], and the Rule 9019/§ 363 Settlement Approval Motion remains pending today. According to the Plan, the Chubb Insurers' Settlement Agreement will be deemed rejected on the Plan Effective Date[255] and the Chubb Insurers are entitled to rejection damages as a result.

130. The Plan does not discuss or expressly provide for a rejection damages claim by the Chubb Insurers; the Chubb Insurers were disenfranchised from voting on the Plan regarding the treatment – or lack thereof – of their potential rejection damages claim; the Committee did not represent the Chubb Insurers' interests with respect to their contemplated (at least by Debtor and the Committee) general unsecured claim; and the Liquidation Analysis contains ***zero*** information as to whether the Chubb Insurers will receive more under the proposed Plan than they would in a Chapter 7 liquidation. As a result of these failures, the Plan cannot be confirmed pursuant to § 1129(a)(7).

E. The Insurance Finding in § 11.1(g)(xxvii) of the Plan is Unlawful.

131. Section 11.1(g)(xxvii) of the Plan requires the Court to find, as a condition precedent to confirmation, that:

---

[254] *See* Dkt. No. 9.

[255] *See* Plan § 6.1.

> Hopeman's conduct in connection with and throughout the Chapter 11 Case, including its negotiations with the Committee and the Future Claimants' Representative, Hopeman's commencement of this Chapter 11 Case, and the drafting, negotiation, proposing, confirmation, and consummation of the Plan, does not and has not violated any Asbestos Insurance Cooperation Obligations, nor were such events or conduct a breach of any express or implied covenant of good faith and fair dealing.

In other words, the Plan Proponents seek a declaratory judgment from this Court, with res judicata effect, that their conduct in this bankruptcy case did not and does not affect coverage under the Chubb Insurers' policies and CIP Agreements as a matter of state law.[256]

132. No authority authorizes the inclusion of such language in the Plan. The question properly before a bankruptcy court in determining whether to confirm a plan of reorganization is whether the adjustment of the creditor's rights against the debtor comports with the requirements of the Bankruptcy Code. It is not an opportunity for the proponent of a plan to obtain a ruling by circumventing the requirements of due process.[257]

133. The declaration that the Plan Proponents seek must be sought by way of an

---

[256] "A confirmed chapter 11 plan of reorganization operates as a final judgment with res judicata effect." *First Union Commercial Corp. v. Nelson, Mullins, Riley & Scarborough (In re Varat Enters., Inc.),* 81 F.3d 1310 (4th Cir.1996), *citing Stoll v. Gottlieb,* 305 U.S. 165 (1938).

[257] *See Mt. McKinley Ins.,* 518 B.R. at 323 ("Whether PPG or Corning has a contractual duty to cooperate with Mt. McKinley under the relevant insurance policies is a matter to be resolved in coverage litigation. Nothing in the plan or the bankruptcy court's confirmation opinion and order made any determination with respect to this issue. …Should either PPG or Corning breach a contractual duty it owes under the policies, Mt. McKinley may assert that as a defense in coverage litigation. Neither PPG nor Corning may claim that § 6.5 of the trust distribution procedures—or any part of the plan, the bankruptcy court's opinion, or this opinion—excuses it from any duty under the relevant insurance policies. If either PPG or Corning fails to cooperate with Mt. McKinley, it will do so at its peril."); *Cf. Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.),* 4 F.3d 1095, 1099 (2d Cir. 1993) (holding that in deciding whether to approve a debtor's decision to assume or reject an executory contract under 11 U.S.C. § 365, a bankruptcy court may not decide disputes between the parties arising out of that contract).

adversary proceeding.[258] Such a coverage dispute would be a constitutionally "non-core" matter in which the bankruptcy court would be limited to making proposed findings and conclusions that would be subject to de novo review in the district court.[259] The fact that the determination of coverage may be relevant to the feasibility of the plan does not alter that conclusion.[260] But even if such relief can be granted in a contested matter involving plan confirmation (and it cannot), there is no factual or legal basis for the proposed finding contained in Plan § 11.1(g)(xxvii) – if anything, the opposite is true based on debtor's refusal to include language in the Plan ensuring that the Trust and its beneficiaries (holders of Channeled Asbestos Claims) abide by and honor all of the provisions in the Chubb Insurers' Policies, the Wellington Agreement, and the 2009 Settlement Agreement.

V. The Plan is Not Proposed in Good Faith under § 1129(a)(3) and it Cannot be Confirmed.

134. A plan of reorganization cannot be confirmed unless it satisfies 11 U.S.C. § 1129(a)(3), which requires that the plan be proposed in good faith and not by any means forbidden

---

[258] *See* Fed. R. Bankr. P. 7001(9); *Feld v. Zale Corp. (Matter of Zale Corp.),* 62 F.3d 746 (5th Cir. 1995), citing *Lyons v. Lyons (In re Lyons),* 995 F.2d 923, 924 (9th Cir. 1993) (holding that, when a Rule 7001 category was at issue, the movant "may obtain the authority he seeks only through an adversary proceeding").

[259] *See In re U.S. Brass Corp.,* 110 F.3d 1261, 1268 (7th Cir. 1997) ("Eljer's claimed right to insurance coverage is a creation of state contract law and one that could be vindicated in an ordinary breach of contract suit if Eljer were not a bankrupt. The fact that it is an *important* right to the bankrupt—Eljer claims to be seeking $500 million in insurance coverage—is irrelevant."); *In re Longview Power, LLC,* 515 B.R. 107, 114 (Bankr. D. Del. 2014) (holding that claim seeking declaratory judgment regarding the availability of coverage under the policy was non-core); *see also In re PRS Ins. Grp., Inc.,* 445 B.R. 402, 404 (Bankr. D. Del. 2011) (citing cases).

[260] *See Longview Power,* 515 B.R. at 115 ("Plaintiffs also argue that the determination of coverage is necessary to establish plan feasibility, because the Amended Plan states that a coverage determination is a condition precedent to confirmation, and therefore the action can exist only in the bankruptcy context. However, the Court can see no limiting principle to this argument, and it would give debtors unfettered license to confer core status to proceedings by requiring their favorable adjudication in order to confirm a plan.").

by law. In determining whether a plan of reorganization has been proposed in good faith, the bankruptcy court must examine "the totality of the circumstances surrounding the ***development and proposal*** of the plan."[261] A court will consider whether the plan "(1) fosters a result consistent with the Code's objectives, (2) the plan has been proposed with honesty and good intentions. . . and (3) there was fundamental fairness in dealing with the creditors."[262]

135. Debtor bears the burden of establishing good faith and fundamental fairness.[263] The good faith requirement "is designed to prevent abuse of the bankruptcy laws and protect jurisdictional integrity."[264] Thus, for a plan to be proposed in good faith, it must "achieve a result consistent with the objectives and purposes of the Bankruptcy Code,"[265] and exhibit a "fundamental fairness in dealing with one's creditors."[266] Fundamental fairness requires that "the plan be proposed with honesty, good intentions and a basis for expecting that a reorganization can

---

[261] *In re SM 104 Ltd.*, 160 B.R. 202, 244 (Bankr. S.D. Fla. 1993) (emphasis added). *See also Sylmar Plaza*, 314 F.3d at 1074-75 (the bankruptcy court must consider the "totality of the circumstances" of a particular case in assessing the debtor's good faith).

[262] *In re Exide Holdings, Inc.,* No. 20-11157-CSS, 2021 WL 3145612, at *11 (D. Del. July 26, 2021) (internal quotation marks omitted).

[263] *In re Silberkraus,* 253 B.R. 890, 902 (Bankr. C.D. Cal. 2000). *See also Financial Security Assurance v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship),* 116 F.3d 790, 802 (5th Cir. 1997) ("The standard of proof required by the debtor to prove a Chapter 11 plan was proposed in good faith is by a preponderance of the evidence").

[264] *In re Walker,* 165 B.R. 994, 1001 (E.D. Va. 1994) (internal quotes and citations omitted).

[265] *Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza),* 314 F.3d 1070, 1074 (9th Cir. 2002), quoting *In re Madison Hotel Assocs.,* 749 F.2d 410, 425 (7th Cir. 1994). *See also In re South Beach Secs., Inc.,* 606 F.3d 366, 376 (7th Cir. 2010) ("To be in good faith a plan of reorganization must have a true purpose and fact-based hope of either 'preserving [a] going concern' or 'maximizing property available to satisfy creditors'"); *In re 20 Bayard Views, LLC,* 2011 WL 839536, at *9 (Bankr. E.D.N.Y. March 7, 2011) ("A plan is proposed in good faith only if it has 'a legitimate and honest purpose to reorganize the debtor'"), quoting *Mercury Capital Corp. v. Milford Conn. Assocs.,* 354 B.R. 1, 7 (D. Conn. 2006).

[266] *In re Jorgensen,* 66 B.R. 104, 109 (9th Cir. B.A.P. 1986).

be effected with results consistent with the objectives and purposes of the Bankruptcy Code."[267]

136. The Plan cannot be confirmed because it was not proposed in good faith as required by § 1129(a)(3). The Plan does not serve the Chapter 11 reorganizational purpose of "afford[ing] the earnest debtor an opportunity to restructure its finances in such a fashion as to permit continued operation of business ventures so as to enable payment of creditors."[268] Instead, it attempts to create a zombie from a long-defunct debtor through a brand-new "investment," but even then, the "reorganized" debtor will not be engaged in business operations or generate revenue to contribute to the Trust to ensure payment of current and future claims. This case accomplishes nothing more than stripping assets away from holders of current claims in attempt to create a "reorganizing" debtor so that "Reorganized" Hopeman, which would be discharged from asbestos-related liabilities if this were a legitimate § 524(g) case, can continue to be sued in the tort system for those claims.

137. Focused on its goal of confirming a plan and bringing the bankruptcy case to a conclusion because "the Debtor does not have the money to fund a prolonged bankruptcy case,"[269] but faced with the risk that it would be difficult to confirm a plan that the Committee did not support, Hopeman acceded to the Committee's desire for a § 524(g) Plan despite its and the Committee's recognition that Hopeman has no business operations and does not qualify for a discharge or § 524(g) channeling injunction. To ensure the Plan would be one that the Committee would support, Debtor deferred to the Committee regarding (a) the structure of the Plan and the

---

[267] *In re ACandS, Inc.,* 311 B.R. 36, 43 (Bankr. D. Del. 2004), citing *In re Coram Healthcare Corp.,* 271 B.R. 228, 234 (Bankr. D. Del. 2001). *See also* Sylmar Plaza, 314 F.3d at 1074 (a plan is proposed in good faith if it "achieves a result consistent with the objectives and purposes of the [Bankruptcy] Code").

[268] *Walker*, 165 B.R. at 1001.

[269] Dkt. No. 905, ¶ 4.

claims resolution process, (b) the Reorganized Debtor's post-Effective Date "business" investment, (c) the selection of the Future Claimants' Representative, (d) the individuals who will serve as Trustees of the 524(g) Trust, (e) the individuals who will serve on the TAC, and (f) the individual who will serve both as (i) the Trust's Litigation Trustee and (ii) Reorganized Hopeman's sole director and officer.

138. Mr. Lascell testified that Debtor decided to pursue a 524(g) Plan over the previously-filed plan of liquidation because that is what the Committee wanted:

> My understanding is that ***we heard from the creditor committee from the outset of the case that they objected to -- to any plan that was not a 524(g) plan***, and we said we were willing to listen, and if they could demonstrate that. . . it would be in the best interest of [ ] the creditors. And we discussed that -- we discussed what the committee [ ] said with my counsel and made the decision to move forward.[270]

But the only explanation that Debtor and the Committee have offered as to why the Plan is allegedly in the best interests of ***current*** holders of Asbestos Claims is that the 524(g) Trust will "provide an enduring framework under which claimants will be able to pursue litigation in the tort system and either enter into settlements of their lawsuits payable by one or more of Hopeman's Non-Settling Insurers or secure judgments that will permit claimants to pursue insurance coverage litigation to recover on their judgments," which in the Plan Proponents' view "will lead to more claimants receiving compensation for their injuries." Disclosure Statement, Ex. B (Liquidation Analysis), n. 6.

[270] 7/1/25 Lascell Tr., 125:13-126:1 (emphasis added).

137. The Committee's desire "from the outset" to establish a § 524(g) plan is inexplicable given its fiduciary duty to maximize recoveries for current creditors.[271] Current creditors' recoveries are necessarily reduced under a § 524(g) plan because the § 524(g) Trust must preserve assets for the benefit of future claimants.[272] The reduction in current claimants' recoveries via the § 524(g) Plan is particularly acute for holders of Uninsured Asbestos Claims. As explained with respect to the § 1124 and 1129(a)(7) analyses, above, holders of Uninsured Asbestos Claims' sole source of recovery under the Plan is from the remainder of the Certain Insurers' $18.395 million settlement proceeds – estimated to be less than $5.3 million at confirmation. That amount must be reduced to preserve assets for holders of Demands, such that the pool available for current holders of Uninsured Asbestos Claims will be reduced to cents-on-the-dollar. By contrast, in a chapter 7 scenario, current holders of Uninsured Asbestos Claims would recover in full.

138. Thus, the Committee's pursuit of a §524(g) plan to ensure recoveries for future claimants is *prima facie* evidence that the Committee is not honoring its fiduciary duty to its constituency of current creditors[273] and this Plan, dominated by the Committee's terms, is not proposed in good faith. It has long been recognized that current claimants' and future claimants' interests are conflicted. "[F]or the currently injured, the critical goal is generous immediate

---

[271] *In re Fas Mart Convenience Stores, Inc.*, 265 B.R. 427, 432 (Bankr. E.D. Va. 2001) ("Among these duties are fiduciary duties of undivided loyalty and impartial service to all creditors represented by the committee.").

[272] *See* 11 U.S.C. § 524(g)(2)(B)(V) the ttrust "will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner."

[273] *See City Homes*, 564 B.R. at 875 ("*vacatur* [of approval of the disclosure statement] is warranted by the Committee's lack of truly zealous representation on behalf of the Uninsured Claimants. Notwithstanding the Committee's protestations, the Court cannot find that it honored its fiduciary obligation" given the plan's "improper and unequal classification" of uninsured lead paint claims and insured lead paint claims together)..

payments," which "tugs against the interest of [future claimants] in ensuring an ample, inflation-protected fund for the future."[274] The Committee members insistence on pursuing a § 524(g) plan, and the proposed Plan which makes current holders of Asbestos Claims worse off than they would be in a chapter 7 and creates the very "race to the courthouse" that Chapter 11 is specifically designed to avoid, reflect that this Plan was not pursued or proposed in good faith as mandated by 1129(a)(3).

139. Further, the Plan is not consistent with "overarching principles" that a plan "*fairly*" achieve a result consistent with the objectives and purposes of the Bankruptcy Code.[275] It is not enough that a bankruptcy case "is filed and proceeds in good faith," nor that "there is at least one valid purpose to the [p]lan."[276] The plan must be consistent "with other overarching principles," including "fundamental fairness."[277]

140. In *Skinner,* the Third Circuit held that a plan failed to meet the "fairness" element of the good faith test because it "establishe[d] an inherent conflict of interest under circumstances that [we]re especially concerning."[278] Because "creditor voting" could not "cure" that conflict of interest, the Court of Appeals held that the *Skinner* plan was "patently unconfirmable" and upheld

---

[274] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 (1997). *See also Johns-Manville*, 36 B.R. at 749 (current claimants' "stake in maximizing recovery from the reorganizing Manville may be antithetical to the expectations of future interests," presenting a "conflict-of-interest problem" that precludes a current creditors' committee from also representing the interests of future claimants); *In re Joint E. & S. Dist. Asbestos Litig*., 129 B.R. 710, 772 (E.D.N.Y. 1991), vacated on other grounds, 982 F.2d 721 (2d Cir. 1992), *opinion modified on reh'g*, 993 F.2d 7 (2d Cir. 1993) ("the interests of present and future claimants are in conflict. Hence no present claimant can serve as an adequate representative of future claimants.").

[275] *Skinner*, 688 F.3d at 158 (emphasis in original).

[276] *Id.* at 157, 160 n. 8.

[277] *Id*.

[278] *Skinner*, 688 F.3d at 158.

the bankruptcy court's decision to reject the plan at the disclosure statement stage.[279] Here, the Plan fails, and confirmation should be denied, for the same reasons as the *Skinner* plan.

141. *Skinner* concerned a liquidation plan filed by a "defunct" former manufacturer of steam engines and merchant ship parts that allegedly contained asbestos.[280] As with the Debtor here, the *Skinner* debtor sold all its assets post-petition and was not a going concern.[281] Also like the Debtor here, the *Skinner* debtor asserted rights under liability insurance policies which contained "standard clauses obligating the insured to cooperate in the defense of claims against it."[282] The Chapter 11 plan in *Skinner* would have required each asbestos claimant whose claim was resolved under the plan to pay the bankruptcy estate 20% of the cash received by the claimant from the insurance recoveries on account of their claim.[283] This 20% "Surcharge Cash" then would become part of a "Plan Payment Fund" that would be used to make payments on account of administrative claims and non-asbestos claims.[284] Acknowledging that the case had "proceeded in good faith" and that "there [wa]s at least one valid purpose to the [p]lan," "maximizing value to creditors," the Court of Appeals held that the plan nevertheless would "not fairly achieve the Bankruptcy Code's objectives" because it "set[ ] up a system in which [the debtor] would be financially incentivized to sabotage its own defense," which created an inherent conflict because the debtor was contractually "required to cooperate in its defense, but [would] be incentivized to do otherwise."[285]

---

[279] *Id.* at 161.

[280] *Id.* at 158.

[281] *Id.*

[282] *Id*. at 149.

[283] *Id*. at 151.

[284] *Id.*

[285] *Id.* at 158-159.

142. ***The same is true here***. "Reorganized" Hopeman's sole director and officer, charged with performing Hopeman's duties of cooperation to the Non-Settling Asbestos Insurers intended to minimize Hopeman's liabilities, will be the same individual serving as the Trust's Litigation Trustee. The Litigation Trustee's sole compensation is 33 1/3% of amounts recovered from litigating with Non-Settling Asbestos Insurers on behalf of Insured Asbestos Claimants. This creates an inherent conflict of interest because the Litigation Trustee, whose fiduciary obligation is owed to holders of Channeled Asbestos Claims, maximizes his compensation by maximizing the amount of Reorganized Hopeman's liability for those claims.

143. Further, the Litigation Trustee's fiduciary obligation to the Trust and its beneficiaries means that he will have the obligation to maximize the Trust's assets and recoveries. In the context of this Plan and Debtor's case, the only means of doing so is increasing the amount of recoveries available from Non-Settling Insurers. ***That can only happen by maximizing the amount of Reorganized Hopeman's liabilities***. But "the law of Virginia is clear that corporate directors have a fiduciary duty to the corporation and to its shareholders, and they must govern themselves accordingly."[286] The Litigation Trustee's fiduciary obligation to the Trust thus directly conflicts with his fiduciary obligation to Reorganized Hopeman as a matter of law. This alone precludes confirmation pursuant to §§ 1129(a)(1) and 1129(a)(3).

144. The conflicting fiduciary obligations that Mr. Richardson would owe to the Trust and to Reorganized Hopeman also render the Plan non-confirmable pursuant to § 1129(a)(5). Pursuant to that provision, a Plan cannot be confirmed unless "(i) [t]he proponent of the plan has

[286] *In re James River Coal Co.*, 360 B.R. 139, 170 (Bankr. E.D. Va. 2007), citing Va. Code § 13.1–690; *Byelick v. Vivadelli,* 79 F.Supp.2d 610, 623 (E.D. Va.1999) ("It is well settled that '[a] Virginia corporation's directors and officers owe a duty of loyalty both to the corporation and to the corporation's shareholders.'").

disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director. . . ; and (ii) the appointment to, or continuance in, such office of such individual, is consistent with public policy."[287] The Plan fails both requirements. First, nothing in the Plan discloses that the Litigation Trustee/Hopeman's sole director, Mr. Richardson, is currently co-counsel and part of a fee-sharing arrangement with the Committee's co-chair, Mr. Branham – who also will serve as a member of the TAC – in an asbestos-related lawsuit.[288] Second, given Mr. Richardson's ties with the Committee's co-chair and TAC member, and the perverse incentive to sabotage Reorganized Hopeman's defense that is created by his contingency fee compensation in his role as Litigation Trustee, his appointment as Reorganized Hopeman's only director cannot comport with public policy.

145. The Committee and FCR selected Mr. Richardson to serve as the Litigation Trustee. The Committee and FCR also selected Mr. Richardson to serve as Reorganized Hopeman's sole director,[289] notwithstanding the conflicting fiduciary obligations he will owe in those roles and the inherent conflict created by his contingency fee compensation pursuant to the Trust Agreement. That is exactly the type of conflict interest demonstrating that the Plan cannot "*fairly* achieve the Bankruptcy Code's objectives."[290] Accordingly, confirmation of the Plan must be denied.

---

[287] 11 U.S.C. § 1129(a)(5).

[288] 7/3/25 Branham Tr., p. 84:10-25 ("Q. But do your two firms specifically have any sort of fee-sharing arrangement with respect to that case? A. Yes.").

[289] *See* Plan § 8.7 (**" Corporate Governance of Reorganized Hopeman.** On the Effective Date, (a) the current officers and directors of Hopeman shall be deemed to resign from their respective positions by operation of the Plan, and (b) the individual(s) identified in a notice to be filed jointly by the Committee and the Future Claimants' Representative no later than two (2) days prior to the deadline established to accept or reject the Plan shall be appointed to serve as the officers and as the director of Reorganized Hopeman.").

[290] *Skinner*, 688 F.3d at 158.

CONCLUSION

146. As the Supreme Court long ago cautioned, while "[o]ne can easily sympathize with the desire of a court to terminate bankruptcy reorganization proceedings . . . the need for expedition, however, is not a justification for abandoning proper standards."[291] Confirming the proposed Plan would require this Court to abandon many such standards under the Bankruptcy Code and applicable law. Thus, for the reasons set forth above, final approval of the Disclosure Statement and confirmation of the Plan should be denied.

Dated: July 7, 2025

Respectfully submitted,

/s/ Dabney J. Carr

Dabney J. Carr (VSB No. 28679)
TROUTMAN PEPPER LOCKE LLP
1001 Haxall Pt.
Richmond, VA 23219
Telephone: (804) 697-1200
Dabney.carr@troutman.com

Leslie A. Davis (admitted *pro hac vice*)
Troutman Pepper Locke LLP
401 9th Street, NW
Washington, DC 20004
Telephone: (202) 274-2958
Leslie.davis@troutman.com

-and-

Patricia B. Santelle (admitted *pro hac vice*)
White and Williams LLP
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103
Telephone: (215) 864-7000
santellep@whiteandwilliams.com

Counsel for Century Indemnity Company and Westchester Fire Insurance Company

[291] *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 7, 2025, a true and correct copy of the foregoing Chubb Insurers' Objections to Final Approval of the Disclosure Statement and Confirmation of Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code was served upon all parties receiving electronic notice through the Court's ECF notification system, and served upon the following via electronic mail and U.S. Mail:

Counsel for Hopeman Brothers, Inc.
Hunton Andrews Kurth LLP
Joseph P. Rovira
Catherine A. Rankin
600 Travis Street
Suite 4200
Houston, TX 77002

Counsel for Hopeman Brothers, Inc.
Hunton Andrews Kurth LLP
Tyler P. Brown
Henry P. (Toby) Long
III Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

US Trustee for the Eastern District of Virginia
Attn: Kathryn R. Montgomery
701 East Broad Street
Suite 4304
Richmond, VA 23219

Counsel for the Official Committee of Unsecured Creditors
Caplin & Drysdale, Chartered
Kevin C. Maclay
Todd E. Phillips
Jeffrey A. Liesemer
Kevin M. Davis
Nathaniel R. Miller
1200 New Hampshire Avenue NW, 8th Floor
Washington, DC 20036

I FURTHER CERTIFY that on July 7, 2025, the foregoing Notice of Motions and Notice of Hearings was served upon the service list attached hereto as Exhibit A via Electronic Mail; and via First Class Mail upon the service list attached hereto as Exhibit B.

/s/ Dabney J. Carr
Dabney J. Carr

EXHIBIT A TO CERTIFICATE OF SERVICE

Description	CreditorName	CreditorNoticeName	Email
Top 20 law firms with unpaid settlement amounts and pending claims	Baron & Budd, P.C.	Ann Harper	aharper@baronbudd.com
Top 20 law firms with pending claims	Bodie Dolina Friddell Grenzer	James Smith	jtsmith@bodie-law.com
Counsel for the Chubb Settling Insurers	Brandywine Holdings	Sandra Hourahan	Sandra.hourahan@brandywineholdings.com
Counsel for the Chubb Settling Insurers	Brandywine Holdings	Shelby Mattioli, SVP Direct Claims	Shelby.Mattioli@brandywineholdings.com
Top 20 law firms with unpaid settlement amounts and pending claims	Brayton Purcell LLP	Alan Brayton	abrayton@braytonlaw.com
Top 20 law firms with unpaid settlement amounts and pending claims	Brookman Rosenburg Brown & Sandler	Larry Brown	lbrown@brbs.com
Proposed Counsel for Marla Rosoff Eskin, Future Claimants' Representative	Campbell & Levine, LLC	David B. Salzman, Kathryn L. Harrison	dsalzman@camlev.com; kharrison@camlev.com
Counsel for the Official Committee of Unsecured Creditors	Caplin & Drysdale, Chartered	Kevin C. Maclay, Todd E. Phillips, Jeffrey A. Liesemer, Kevin M. Davis, Nathaniel R. Miller	kmaclay@capdale.com; tphillips@capdale.com; jliesemer@capdale.com; kdavis@capdale.com; nmiller@capdale.com
Counsel for Liberty Mutual Insurance Company	Choate, Hall & Stewart LLP	Douglas R. Gooding, Jonathan D. Marshall, Kevin J. Finnerty	dgooding@choate.com; jmarshall@choate.com; kfinnerty@choate.com
Top 20 law firms with unpaid settlement amounts	Goldberg Persky White P.C.	Theodore Goldberg	tgoldberg@gdldlaw.com
Local Counsel for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner	Hirschler Fleischer, P.C.	Robert S. Westermann, Kollin G. Bender	rwestermann@hirschlerlaw.com; kbender@hirschlerlaw.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Top 20 law firms with pending claims	Irwin Fritchie Urquhart & Moore	Gus Fritchie	gfritchie@irwinllc.com
Counsel for Liberty Mutual Insurance Company	Kaufman & Canoles, P.C.	Douglas M. Foley	dmfoley@kaufcan.com
Top 20 law firms with unpaid settlement amounts and pending claims	Law Office of Phillip C. Hoffman	Phillip Hoffman	phil@pchlawfirm.com
Top 20 law firms with unpaid settlement amounts	Law Offices of Alwyn H. Luckey	Alwyn Luckey	reception@alwynluckey.com
Top 20 law firms with unpaid settlement amounts	Law Offices of G. Patterson Keahey, P.C.	G. Patterson Keahey, Jr.	info@mesohelp.com
Top 20 law firms with pending claims	Law Offices of Paul A. Weykamp	Paul Weykamp	pweykamp@weykamplaw.net
Top 20 law firms with pending claims	Lomax Law Firm	Scott Nelson	contact.us@thelomaxlawfirm.com
Counsel for Huntington Ingalls Industries, Inc.	McGuireWoods LLP	Dion W. Hayes, Sarah B. Boehm, Connor W. Symons, K. Elizabeth Sieg	dhayes@mcguirewoods.com; sboehm@mcguirewoods.com; csymons@mcguirewoods.com; bsieg@mcguirewoods.com
Top 20 law firms with unpaid settlement amounts and pending claims	Peter Angelos Law	James Zavakos	jzavakos@lawpga.com
Top 20 law firms with pending claims	Pourciau Law Firm	Damon Pourciau	drp@pourciaulaw.com
Top 20 law firms with unpaid settlement amounts	Provost Umphrey Law Firm, L.L.P.	Brian Blevins, Jr., Colin Moore	dfelps@provostumphrey.com
Proposed Counsel for Marla Rosoff Eskin, Future Claimants' Representative	Reaves PLLC	Michael G. Wilson	mike.wilson@reavescoley.com

EXHIBIT A TO CERTIFICATE OF SERVICE (2)

Description	CreditorName	CreditorNoticeName	Email
Lead Counsel for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner	Roussel & Clement	Gerolyn Roussel, Jonathan B. Clement, Benjamin P. Dinehart	rcfirm@rousselandclement.com
Top 20 law firms with unpaid settlement amounts	Shein Law	Peter Shein	bshein@sheinlaw.com
Top 20 law firms with pending claims	Shrader & Associates, L.L.P.	Ross D. Stomel II	ross@shraderlaw.com
Top 20 law firms with unpaid settlement amounts	Simmons Hanly Conroy	John Simmons	john@simmonsfirm.com
Top 20 law firms with unpaid settlement amounts and pending claims	Stephen L. Shackelford, PLLC	Stephen Shackelford	steve@shackelfordlawoffice.com
Counsel for The Travelers Indemnity Company, Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company	Steptoe LLP	Joshua R. Taylor and Catherine D. Cockerham	jrtaylor@steptoe.com; ccockerham@steptoe.com
Top 20 law firms with unpaid settlement amounts and pending claims	The Gori Law Firm	Christopher Layloff	clayloff@gorilaw.com
Counsel for Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, and General Reinsurance Corporation	Troutman Pepper Locke LLP	Dabney J. Carr, IV	dabney.carr@troutman.com
Counsel for the Chubb Settling Insurers, Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, and General Reinsurance Corporation	Troutman Pepper Locke LLP	Leslie A. Davis and Michael T. Carolan	Leslie.davis@troutman.com
Office of the US Trustee for the Eastern District of Virgina	US Trustee for the Eastern District of Virgina	Attn: Kathryn R. Montgomery	kathryn.montgomery@usdoj.gov
Virginia Attorney General	Virginia Attorney General	Attn Bankruptcy Department	mailoag@oag.state.va.us
Top 20 law firms with unpaid settlement amounts	Weitz & Luxenberg	Perry Weitz	info@weitzlux.com
Counsel for the Chubb Settling Insurers and Certain Settling Insurers, Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, and General Reinsurance Corporation	White and Williams LLP	Patricia B. Santelle	santellep@whiteandwilliams.com
Top 20 law firms with pending claims	Womble Bond Dickinson	Theodore F. Roberts	Ted.Roberts@wbd-us.com

EXHIBIT B TO CERTIFICATE OF SERVICE

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Top 20 law firms with pending claims	Ashcraft & Gerel	Dominick Callela	120 E. Baltimore St., Ste. 1802		Baltimore	MD	21202
Top 20 law firms with unpaid settlement amounts and pending claims	Baron & Budd, P.C.	Ann Harper	3102 Oak Lawn Ave #1100		Dallas	TX	75219
Top 20 law firms with pending claims	Bodie Dolina Friddell Grenzer	James Smith	1301 York Road, Suite 402		Lutherville	MD	21093
Counsel for the Chubb Settling Insurers	Brandywine Holdings	Sandra Hourahan	436 Walnut Wa06s St		Philadelphia	PA	19106
Counsel for the Chubb Settling Insurers	Brandywine Holdings	Shelby Mattioli, SVP Direct Claims	510 Walnut Street, WB11E		Philadelphia	PA	19106
Top 20 law firms with unpaid settlement amounts and pending claims	Brayton Purcell LLP	Alan Brayton	222 Rush Landing Rd.	PO Box 6169	Novato	CA	94948
Top 20 law firms with unpaid settlement amounts and pending claims	Brookman Rosenburg Brown & Sandler	Larry Brown	24 N. Bryn Mawr Ave., Suite 309		Bryn Mawr	PA	19010
Proposed Counsel for Marla Rosoff Eskin, Future Claimants' Representative	Campbell & Levine, LLC	David B. Salzman, Kathryn L. Harrison	310 Grant Street, Suite 1700		Pittsburgh	PA	15219
Counsel for the Official Committee of Unsecured Creditors	Caplin & Drysdale, Chartered	Kevin C. Maclay, Todd E. Phillips, Jeffrey A. Liesemer, Kevin M. Davis, Nathaniel R. Miller	1200 New Hampshire Avenue NW, 8th Floor		Washington	DC	20036
Counsel for Liberty Mutual Insurance Company	Choate, Hall & Stewart LLP	Douglas R. Gooding, Jonathan D. Marshall, Kevin J. Finnerty	Two International Place		Boston	MA	02110
Top 20 law firms with unpaid settlement amounts and pending claims	Cumbest, Cumbest, Hunter & McCormick, P.A.	David McCormick	729 Watts Ave	PO Box 1287	Pascagoula	MS	39567
Official Committee of Unsecured Creditors	Darrell Kitchen	Lisa Nathanson Busch, Esquire	Simmons Hanly Conroy	112 Madison Avenue, 7th Floor	New York	NY	10016
Official Committee of Unsecured Creditors	Donald M. Hoffman, Jr	Stephen Austin, Esquire	Stephen J. Austin, LLC	1 Galleria Blvd. Ste. 1900	Metairie	LA	70001
Top 20 law firms with unpaid settlement amounts	Ferrell Law Group	James Ferrell	6226 Washington Ave.	Ste 200	Houston	TX	77007
Top 20 law firms with unpaid settlement amounts	Goldberg Persky White P.C.	Theodore Goldberg	11 Stanwix St	Suite 1800	Pittsburgh	PA	15222
Top 20 law firms with pending claims	Goodman, Meagher & Enoch, LLP	John Amato IV	One Charles Center	100 N. Charles St., Ste. 1610	Baltimore	MD	21201
Local Counsel for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner	Hirschler Fleischer, P.C.	Robert S. Westermann, Kollin G. Bender	The Edgeworth Building	2100 East Cary Street	Richmond	VA	23223
Local Counsel for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner	Hirschler Fleischer, P.C.	Robert S. Westermann, Kollin G. Bender	P.O. Box 500		Richmond	VA	23218-0500
IRS	Internal Revenue Service	Attn Susanne Larson	31 Hopkins Plz Rm 1150		Baltimore	MD	21201

EXHIBIT B TO CERTIFICATE OF SERVICE (2)

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346		Philadelphia	PA	19101-7346
Top 20 law firms with pending claims	Irwin Fritchie Urquhart & Moore	Gus Fritchie	400 Poydras St., Ste 2700		New Orleans	LA	70130
Counsel for Liberty Mutual Insurance Company	Kaufman & Canoles, P.C.	Douglas M. Foley	Two James Center	1021 E. Cary Street, Suite 1400	Richmond	VA	23219
Top 20 law firms with unpaid settlement amounts and pending claims	Law Office of Phillip C. Hoffman	Phillip Hoffman	400 Poydras Street	Suite 1625	New Orleans	LA	70130
Top 20 law firms with unpaid settlement amounts	Law Offices of Alwyn H. Luckey	Alwyn Luckey	PO Box 724		Ocean Springs	MS	39566
Top 20 law firms with pending claims	Law Offices of Clifford Cuniff	Clifford Cuniff	1070 New River Inlet Rd		N Topsail Bch	NC	28460-9248
Top 20 law firms with unpaid settlement amounts	Law Offices of G. Patterson Keahey, P.C.	G. Patterson Keahey, Jr.	One Independence Plaza	Suite 612	Birmingham	AL	35209
Top 20 law firms with pending claims	Law Offices of Paul A. Weykamp	Paul Weykamp	909 Ridgebrook Road, Suite 108		Sparks	MD	21152
Top 20 law firms with pending claims	Law Offices of Peter T. Nicholl	Peter Nicholl	36 S. Charles St., Ste. 1700		Baltimore	MD	21201
Top 20 law firms with pending claims	Lomax Law Firm	Scott Nelson	2502 Market St.	PO Drawer 1368	Pascagoula	MS	39568-1368
Counsel for Huntington Ingalls Industries, Inc.	McGuireWoods LLP	Dion W. Hayes, Sarah B. Boehm, Connor W. Symons, K. Elizabeth Sieg	Gateway Plaza	800 East Canal Street	Richmond	VA	23219
Official Committee of Unsecured Creditors	Melissa Beerman	J. Bradley Smith, Esquire	Dean Omar Branham Shirley, LLP	302 N. Market Street, Ste. 300	Dallas	TX	75202
Official Committee of Unsecured Creditors	Nancy McComas-Doiron	Carol A. Hastings, Esquire	Peter Angelos Law	100 N. Charles Street, 20th Floor	Baltimore	MD	21201
Top 20 law firms with pending claims	Nass Cancelliere Brenner	David Brenner	1500 JFK Blvd. (Two Penn Center)	Suite 404	Philadelphia	PA	19102
Top 20 law firms with pending claims	Patten, Wornom, Hatten & Diamonstein, LC	Donald Patten	12350 Jefferson Ave., Ste. 300		Newport News	VA	23602
Top 20 law firms with unpaid settlement amounts and pending claims	Peter Angelos Law	James Zavakos	100 North Charles St.	22nd Floor	Baltimore	MD	21201
Top 20 law firms with pending claims	Pourciau Law Firm	Damon Pourciau	8550 United Plaza Blvd	Suite 702	Baton Rouge	LA	70809
Top 20 law firms with unpaid settlement amounts	Provost Umphrey Law Firm, L.L.P.	Brian Blevins, Jr., Colin Moore	350 Pine Street	Suite 1100	Beaumont	TX	77701
Proposed Counsel for Marla Rosoff Eskin, Future Claimants' Representative	Reaves PLLC	Michael G. Wilson	555 Belaire Avenue, Suite 300		Chesapeake	VA	23320
Counsel for the Chubb Settling Insurers and Certain Settling Insurers	Resolute Management Inc.	Senior Vice-President, Claims	125 High Street	Suite 1010	Boston	MA	02110
Lead Counsel for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner	Roussel & Clement	Gerolyn Roussel, Jonathan B. Clement, Benjamin P. Dinehart	1550 W Causeway Approach		Mandeville	LA	70471

EXHIBIT B TO CERTIFICATE OF SERVICE (3)

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Top 20 law firms with unpaid settlement amounts	Scott & Scott, LTD	Tom Scott	PO Box 2009		Jacksonville	MS	39215
Top 20 law firms with unpaid settlement amounts	Shein Law	Peter Shein	121 South Broad St.	21st Floor	Philadelphia	PA	19107
Top 20 law firms with pending claims	Shrader & Associates, L.L.P.	Ross D. Stomel II	9 E. Greenway Plaza, Ste. 2300		Houston	TX	77046
Top 20 law firms with unpaid settlement amounts	Simmons Hanly Conroy	John Simmons	One Court St.		Alton	IL	62002
Top 20 law firms with unpaid settlement amounts and pending claims	Stephen L. Shackelford, PLLC	Stephen Shackelford	5 Old River Pl	Ste 204	Jackson	MS	39202
Counsel for The Travelers Indemnity Company, Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company	Steptoe LLP	Joshua R. Taylor and Catherine D. Cockerham	1330 Connecticut Avenue, N.W.		Washington	DC	20036
Top 20 law firms with unpaid settlement amounts and pending claims	The Gori Law Firm	Christopher Layloff	156 N. Main St.		Edwardsville	IL	62025
Counsel for Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, and General Reinsurance Corporation	Troutman Pepper Locke LLP	Dabney J. Carr, IV	1001 Haxall Pt.		Richmond	VA	23219
Counsel for the Chubb Settling Insurers, Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, and General Reinsurance Corporation	Troutman Pepper Locke LLP	Leslie A. Davis and Michael T. Carolan	401 9th Street NW	Suite 1000	Washington	DC	20004
Office of the US Trustee for the Eastern District of Virgina	US Trustee for the Eastern District of Virgina	Attn: Kathryn R. Montgomery	701 East Broad Street	Suite 4304	Richmond	VA	23219
Official Committee of Unsecured Creditors	Veronica Miller	Chris McKean, Esquire	MRHFM Law Firm	1015 Locust Street, Ste. 1200	St. Louis	MO	63101
Virginia Attorney General	Virginia Attorney General	Attn Bankruptcy Department	202 North Ninth Street		Richmond	VA	23219
Top 20 law firms with unpaid settlement amounts	Weitz & Luxenberg	Perry Weitz	700 Broadway		New York	NY	10003
Counsel for the Chubb Settling Insurers and Certain Settling Insurers, Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, and General Reinsurance Corporation	White and Williams LLP	Patricia B. Santelle	1650 Market Street	One Liberty Place, Suite 1800	Philadelphia	PA	19103
Top 20 law firms with pending claims	Womble Bond Dickinson	Theodore F. Roberts	100 Light Street, 26th Floor		Baltimore	MD	21202

.